חשן המשפט

JEWISH CODE OF JURISPRUDENCE

TALMUDICAL LAW DECISIONS

INHERITANCE, GUARDIAN, MARRIAGE, DIVORCE
DOMESTIC RELATIONS, LAW QUESTIONS

By RABBI J. L. KADUSHIN
AUTHOR OF THE JEWISH CODE

PART I - II AND BRITH ITZHAK

אורים ותומים

PART III

BOSTON
THE TALMUD SOCIETY
1921

A FOREWORD TO THE READER.

I have the honor of introducing to you my second edition, the 3rd Jewish Code of Jurisprudence. This edition has been published by the urgent demand of the great number of law school scholars and educated men who are anxious to devour what they consider the very precious matter contained in the holy volume on the Rabbinical Law of inheritance, guardians, bailees, marriage, divorce and domestic relations. The holy law is immortal and is suitable for all times, generations and persons, past and present, because it is created by the Holy Lord, who looks with a field glass through which he can see an infinite distance. He knows the future as well as the past. Therefore, even if the law is made about 5,677 years ago, it is just like new and is suitable for every country and every nation. You, judges and lawyers, and all educated men, I am sure will welcome to have in your possession the holy book with the same and even with much greater respect and honor as you welcomed my first volume. The Holy Lord will bless you with long life, health and prosperity.

I, therefore, have considered it my duty to publish this holy volume in these trying days, that you may occupy yourselves with the study in that which teaches. The greater one's knowledge and moral education in the world, spend vast sums of money for education and not one cent for ammunition, and for their benefit the Lord will bless his people with peace.

APPEAL FOR PEACE.

He who maketh peace in his high places may he make peace for us over all the world.

The question of peace is only a misunderstanding of justice, because everybody thinks he is in the right. We should not covet others' possessions, because what we ourselves possess is not ours. Therefore I pray to the Lord who gives wisdom to the wise and knowledge to the understanding, gives a good understanding and pure heart to your children, so that everybody may understand the just and unjust truth. Let the sword stop shedding the blood of mankind and place the spirit of brotherhood in the heart of every man.

Let us learn forgiveness. Let us not seek material gain at the expense of our brethren. We have come into this world with nothing and we shall depart with nothing, for as we come from dust, so shall we return to dust.

In all days let us have the prophet Isaiah's blessing (Chapter 11), namely, the swords shall be beaten unto ploughshares, that nations shall not lift up swords against nations, that the wolf shall dwell with the sheep, that leopards shall lay down with the kid and the calf, so that a young lion and a small boy shall lead them. Amen.

The Editor.

As editor of the Jewish Code of Jurisprudence, I voice expressions of gratitude and appreciation to all those who have encouraged me in my work.

TABLE OF CONTENTS
Part 3
The Law of Inheritance.

SECTION		PAGE
1-17	The Law of Inheritance	251
1	The rights of the first-born son	256
11	If the first-born is an illegitimate	258
12	If it is doubtful whether it is a first-born son	258
13a	The following three persons competent to testify regarding the birth of the first-born son	258
17	If a father becomes dumb	260
18	If a man has two sons, one of whom is his first-born, and both sons die during his lifetime	260
1	The first-born takes no double share in a loan	261
2	If one leaving a widow and sons	261
3	The first-born is entitled to a double share only in property of which he is possessed at the time of his death	261
5	If a father leaves a beast of burden	261
6	The first-born is not entitled to a double share in increase of value of the estate	262
9	If the first-born has made a protest	262
10a	If a father has a partner in business	263
11	If the first-born himself was indebted to his father	263
12	If a pledge was given	263
13	If the first-born sells his birthright	264
14a	If the first-born relinquishes his rights	264
15a	If a promissory note is produced against the father	265
15b	If the other heirs are minors	265
15	If the father mortgaged real property	265
1a	If a man says that so and so is his son or brother	266
2	If a man ascertains that another is his brother (Chap. 280)	268
5	If a man is in possession of his inheritance	269
6	If one leaving a son and a hermaphrodite	269
7b	If a son goes abroad and it is uncertain whether he is alive	269
8	If a man dies leaving daughters and a hermaphrodite	269
9	A house collapses and kills a man and his mother	270
1	Chap. 281. The law to disinherit legal heirs	271
6	Or the first-born son	273
10	If the estate gives to them as gift	274

SECTION		PAGE
11	A difference in writing wills	274
1	A man shall not give his estate to a stranger where there are legal heirs (Chap. 282)	276
1	Heirs must produce evidence (Chap. 284)	277
2	A man drowns in very deep water	277
3	If witnesses saw a man fall into a den of lions or tigers	278
1	Disposition of the property of a captive (Chap. 285)	278
6	If a man goes away of his own free will leaving some property	280
11	The next of kin is permitted to take charge of personal property	281
12	No minor shall be appointed as a guardian	281
14	Should the property of a minor not have a relative appointed as a guardian	281
17	If the property of the minor is possessed by himself	283
19a	If a minor has a father and inherits property of his mother	283
20	A woman was taken into captivity with one daughter	283
1	Chap. 286. If a man dies leaving a minor and adult sons	285
14	If the guardian lends money to an untrustful person (Chap. 290)	296
23a	If a man has a claim against the orphans	298
32	A guardian is not liable in a loss or theft	300
35	If the minors have boarded with a certain man	301
1	If all the brothers are not present and the ones that are present want the estate divided (Chap. 175)	302
8	R and his wife and four children in one house and the house collapses	304

Law of Guardian

1	The law of guardian without compensation (Chap. 291)	305
10	If the shepherd does not watch the cow	306
16	If the guardian leaves the bailment in an unsafe place	308
	If the bailee delivered the article to another	309
35	If an oral agreement is made between the bailee and the guardian	312
36	If a man gives a bailment for guarding and hired the owner	312
1	The bailee is forbidden to use the bailment (Chap. 292)	312
4	If a man gives to a bailee a barrel of wine	313
6	If a man was entrusted wi'h a bag full of golden denari	313

SECTION		PAGE
9	If a man sent an agent to use the bailment	314
11	A man gives an empty barrel to guard	314
13	If the bailee is a banker and was entrusted with a bag of money	314
18	If the bailee gives the bailment to the thieves to save his fortune	315
19	If a man was treasurer in charity	316
21	If a man gives in storage and it becomes spoiled	316
24	A man gives in storage a scroll of law	317
1	When the bailment can be demanded (Chap. 293)	318
8	The bailee returns the bailment through an agent	319
7	A was a broker or marriage broker	320
2	When a defendant makes a plea and can say a better one	322
1	If a man gives a bailment in the presence of a witness (Chap. 297)	323
2	A man left to his son a bound bag (Chap. 298)	324
2	If a man has in his possession charity money and it is stolen or lost (Chap. 299)	325
4	If vessels were given to a man for destroying	325
2	A minor places in storage (Chap. 302)	326
1	The law of compensation guardian (Chap. 303)	326
6	If a wolf devours a sheep	327
17	If a shepherd moves the flock over a bridge	329
2	If that happened in a place where they can prove same with witnesses (Chap. 304)	330
6	If a bundle carrier breaks the barrel of wine	331
2	The bailor claims that the guardian used the bailment (Chap. 305)	332
8	If the guardian makes a condition	333
10	If A says to B, "Lend me your coat"	333
1	All working men are considered compensation guardians	334
9	If a man gives coin to a banker	335
12	A man was hired to write a book	335

Questions of Law

	The reckoning of money in olden times	337
	Talmudical expressions (Part 4)	338
1	One man deposited $100 and the other $200	344
3	If two men give to a shepherd two cows and one dies	344

Law of Marriage

SECTION		PAGE
	The laws of propagation	349
9	If a man without the permission of his wife marries another woman	351
1	The duty of a man to marry a reputable woman	352
2	A man was promised a certain sum of money as his dowry	352
	A young man is forbidden to marry an elderly woman	352
1	The Law of Bastardy	353
6	If an unmarried man has cohabitation with an unmarried woman	355
	Destroying the power of reproduction	355
1	Law concerning (Cohen) priests	356
1	If a woman who marries twice (Chap. 9)	357
4	A man who has two wives dies	358
1	A woman must wait ninety days before she marries another (Chap. 13)	358
5	It is prohibited to marry a woman who has a suckling child	359
7	The woman can demand compensation for nursing	359

The Law of Engagement or Marriage

1	During mourning (Chap. 14)	360
1	Prohibited women for marriage (Chap. 15)	362
1	When a married woman is permitted to re-marry (Chap. 17)	368
19	If witnesses saw a man fall into a den of lions or tigers	374
21	If witnesses saw a man fall into the ocean (Chap. 27)	374

Law Concerning Betrothal

1	A woman owes to a man and the betrothal	376
7	If a man betroths a woman	378
12	With a debt by the rules of third parties	379
5	Betrothed with pledge	381
8	The man says 100 and the woman says 200	382
9	If a man says to a woman you are betrothed to me with this cup	383
5	Betrothed with bread (Chap. 30)	386
7	Gives the bread to the dog	386

SECTION		PAGE
1	A woman was indebted	386
	Betrothal not valued less than one cent (Chap. 31)	386
1	Betrothal with writing (Chap. 32)	387
1	Betrothal with cohabitation	388
2	Benedictions (Chap. 34)	388
7	Refuse to come to the marriage ceremony	402
9	The retracts of the bride (Chap. 51)	402
	The validity of a verbal agreement	404
1	A man promises a dowry to his son-in-law (Chap. 52)	405
1	Returns the dowry during the first year after the death of his wife (Chap. 53)	406
	Ketuboth 47	408
1	A father deposits the dowry (Chap. 54)	408
1	Marriage contract law (Chap. 66)	408
1	A man marries a woman and she becomes insane (Chap. 70)	410
9	A woman's right to sell real property for support	411
6	A man who is unable to support his wife (Chap. 70)	411
11	If the husband leaves his home on account of a quarrel	412
16	A wife borrows money in the absence of her husband	413
19	If a wife makes no demand for support	414
1	A man is bound to support his children (Chap. 71)	414
	His duty is to provide a wife with clothes	415
1	A man can forbid his father-in-law to enter his home	416
4	A man is bound to move out of a locality on account of bad neighbors	417
4	If a man can earn a living in this place	418
3	The rights of a woman	419
5	A man refuses to cohabit	419
4	Woman rebelled	420
1	Duty to release the wife	421
5	Woman breaks the law	421
9	A cohen's wife's captivity	421
	Medical treatment for a wife	421
1	A woman is bound to render her husband services (Chap. 80)	423
17	A woman leaves her husband's house	425
10	The law for suckling her child (Chap. 80)	425
3	Suckle a child by a divorced woman (Chap. 82)	427
12	Who has the right to the children in a divorce case	429

SECTION		PAGE
1	Article found by a woman	431
1-2	Guaranteed or unguaranteed property	431
7	A man sells real property to his wife	432
9	If a father makes a gift on condition	432
	Not to receive bailments from a woman (Chap. 86)	434
8	A husband borrows money from his wife	435
16	A and B are partners in business; one sells the business	436
11	A woman pawns or sells her personal property	436
7	The woman insists on taking her articles (Chap. 88)	438
17	A man leases his wife's estate	440
10	A house collapses upon a man and his wife	444
22	The man's right to the personal property	446
1	Release of the debt by a woman	449
6	A woman is indebted and thereafter she marries	450
	An oral debt	450
9	Fine, tax	450
14	A makes an agreement; shall not inherit his wife (Chap. 92)	452
4	A widow's right to support (Chap. 93)	452
25	The widow's right to be supported is of real free property	457
34	If a man leaves several wives	459
	Widow's right to dwelling (Chap. 94)	460
	The widow must do services for the heirs	462
7	A man leaves four women, and it is found that there is not sufficient wearing apparel for all	463
	The contract of marriage after 25 years	467
1	The right of a widow to sell property (Chap. 93)	467
5	A man sells his mother's marriage contract	470
1	Transfers property to his children (Chap. 106)	470
	Transfers his property to his wife (Chap. 107)	474
1	Release of a woman	474
	Marriage contract providing to support male children	474
	Male heirs are entitled to a tenth of the estate (Chap. 113)	474
	A man promises to support the wife's daughter (Chap. 114)	486
23	A obligated to support B	489
1	If a man marries a woman forbidden to him (Chap. 116)	494

SECTION		PAGE
1	A woman who is declared by an expert of being unable to have cohabitation—or other deformities (Chap. 117)	497
7	A man becomes aware that his wife is epileptic	498
	Dowry rights of a woman	499
5	The enactment made in the City of Tutillo (Chap. 118)	499
12	A widow takes away her husband's estate	499
	Law Questions	502-509
	Introduction to the Law of Divorce	510

Law of Divorce

1	The bill of divorce (Chap. 120)	513
2	The husband has been overcome	513
2	If a husband becomes converted (Chap. 123)	513
1	A bill of divorce must be dated	515
1	Name of the town	516
1	If a man has two names	516
1	Two witnesses must sign (Chap. 130)	517
	The law of writing the bill of divorce	518
1	The bill of divorce must be delivered in the presence of two witnesses	518
1	The law of appointing an agent	520
1	A divorce on a condition	521
1	Man and woman may be compelled to divorce (Chap. 154)	521
8	If a man cannot support his wife	522
11	A man smites his wife	523
12	If the wife is a shrew	523
15	If a woman departs from the home	524
16	If a man became crippled	524
19	A man has epilepsy	525
21	A man wishes to go away	525
25	Woman is childless	525
	Woman gives birth to dead children	525
33	A man marries a woman forbidden to him	526
37	If an unmarried harlot	527
37	If a married woman was promised she cannot demand, because it is not legal	527
39	If she becomes pregnant	527

THE LAW OF INHERITANCE.

The law of inheritance is based upon the following sections of the Holy Scripture:

8. "And unto the children of Israel shalt thou speak, saying, If a man die, and have no son, then shall ye cause his inheritance to pass unto his daughter.

9. "And if he have no daughter, then shall ye give his inheritance unto his brothers.

10. "And if he have no brothers, then shall ye give his inheritance unto his father's brothers.

11. "And if his father have no brothers, then shall you give his inheritance unto his kinsman that is next to him of his family, and he shall inherit it; and it shall be unto the children of Israel a statute of justice, as the Lord had commanded Moses" (Numbers XXVII).

CHAPTER CCLXXVI.

2. The law of inheritance is thus: If a man dies, his son inherits his estate. If he has no son living,

but such son has either a son or a daughter, or a grandchild or a great grandchild, etc., such descendants are entitled to the inheritance (Baba Bathra 115a).

3. If there are no son or descendants of such son, then the daughter is entitled to the inheritance. If there is no daughter living, if such daughter has any direct descendants whatever, such descendants are enttlied to the inheritance (L. c.)

4. If there is no daughter and no issue of said daughter, the father of the deceased is entitled to the inheritance. If her father is not alive, the brothers of the deceased are entitled to the inheritance. If there are no brothers living, then the direct descendants of the brothers are the legal heirs (L. c.)

5. If there are no brothers or descendants of any brother, the sister of the deceased or her direct descendants inherit the estate (L. c.)

6. If there are no sisters or descendants of any sister, the estate belongs to the deceased's father's father, or to his direct male descendants, or to the female descendants if there are no male descendants. If there are no such grandfather and no descendants, the sister of the father of the deceased becomes the sole heir, and if she is not alive the inheritance goes to her direct male descendants or to her female descendants (L. c.)

7. If the father's mother and her descendants are not living, then the inheritance goes to the father's father's father or to his descendants. If there are no such issue, then the inheritance goes to the father's father's mother or to her issue. In accordance with the foregoing rules of law, the inheritance is distributed among the heirs mentioned *ad infinitum,* until the patriarch of the tribe has been reached (L. c.)

8a. If a man dies leaving a daughter and a son's daughter or a son's granddaughter, the latter (son's descendants) are the sole heirs, and the former is entitled to no share of the inheritance whatsoever—only support and a tenth of the estate (L. c., see Chapter 113).

8b. The same rule of law applies likewise to a case where there is a daughter of the brother of the deceased and the sister of the deceased, or to a case where there is a daughter of the brother or the father of the deceased and a sister of the father of the deceased, or to any other case analogous to it (L. c. 108a).

9. A man has two sons, both of them die during his lifetime, the one leaving three sons and the other leaving only one daughter. Thereafter the man dies. In such event, the daughter of the dead son is entitled to one-half of the inheritance, and the three sons of the other dead son are entitled to the other half of the inheritance. The reason for the above

rule of law is that in the eyes of the law it is considered as if both sons were alive at the time of their father's death, each one inheriting an equal share and each one distributing his share among his legal heirs (L. c. 117b).

10. The above rule of law regarding distribution of inheritance applies also to cases regarding the children of the brothers of the deceased and the children of the brother of the father of the deceased (Baba Bathra 113b).

11a. As regards the law of inheritance, the family of the mother of the deceased is not taken into consideration at all (L. c. 108a).

11b. Hence, a mother inherits neither from her son nor her daughter. Brothers of only one mother but not of one father do not inherit from one another. Only the family of the father of the deceased are entitled to the inheritance (Tur).

12. However, as in the case of a deceased father, so it is in the case of a deceased mother. Her son and his descendants are entitled to her inheritance. If there are no such heirs, the daughter of the deceased is entitled to her inheritance (Baba Bathra 111a).

13. An inheritance cannot pass from the mother through a deceased son in order to transfer the inheritance to his brothers of one father. For instance, if a son dies during the lifetime of his mother, and there-

after she dies, it cannot be argued that had the son been alive he would have inherited from his mother, now that he had no descendants living, his half brothers should be entitled to such inheritance. The inheritance reverts to the father's family of the deceased, since her son has no children living (L. c. 114b).

14. If, however, in the foregoing case the mother has died during her son's lifetime, and thereafter he has died, even if he was a minor of but one day old or even if he had lived after her death only one hour, he becomes her legal heir and he in turn causes the inheritance to pass to his heirs through his father (Niddah 43b).

15. The foregoing rule of law, however, holds good only in the event the child was actually born after his mother's death, but a child in its mother's womb does not inherit from his mother if she dies while pregnant (Tur).

16. All illegitimate children or other relatives are entitled to their share in the inheritance as if they were legitimate. For instance, if the deceased has an illegitimate brother or son, he shares in the inheritance just as the legitimate brother or son. But the son born to him of a slave or of a heathen woman is not considered in law as his son for any of the legal matters, and, therefore, he is not entitled to any share in the inheritance (Yebamoth 22a).

17. Heirs cannot inherit things that are not tangible (Mordecai).

CHAPTER CCLXXVII.

The Rights of the First-Born Son.

1. The first-born son takes two shares in his father's estate, *e. g.,* if a man leaves five sons and one of them is the first-born, the latter takes one-third of the entire estate, and the other four sons take one-sixth, each and every one of them. If a man leaves nine sons, the first-born takes one-fifth of the estate, and each and every one of the other eight sons take one-tenth. In accordance with this manner, all estates are divided (Baba Bathra 122).

2. If the estate consists of real property, the first-born is entitled to have his two shares in one and the same locality. (Every man is compelled to grant any favors and accommodations which do not result in harm or loss to himself) (L. c. 12).

3a. A first-born who was born after the death of his father is not entitled to two shares of the inheritance (L. c. 142a).

3b. If most of the child's forehead has come out of its mother's womb while its father was yet alive, although its entire head has come out after the death of the father, he is entitled to two shares of the estate (Bekorath 46a).

4. It is the opinion of some jurists that a first-born son that was born at the time the father was in his death agony, is not entitled to two shares of the inheritance (Nimuke Joseph).

5. If the first-born is an hermaphrodite and thereafter it is ascertained that it is a male child, he is not entitled to two shares in the inheritance (Baba Bathra 126b).

6. If a child not a first-born is an hermaphrodite and thereafter it is ascertained that it is a male child, this does not affect the rights of the first-born so that his double share is diminished thereby, *e. g.,* if a man has three sons and the above-named hermaphrodite, the first-born son takes one-fourth of the estate to which he is entitled by his first birthright, and the remaining three-fourths are divided equally among the three sons and the hermaphrodite (L. c. 127a).

7a. A minor living but one day after the death of the father diminishes the share of the first-born, but an unborn child does not diminish (L. c. 142b).

7b. A son that was born after the death of his father does not cause the share of the first-born son to be diminished (L. c.)

8. A child that is born after a miscarried child, although such miscarried child has already brought its head from the mother's womb when yet alive, is considered in law as the first-born son in so far as

the inheritance is concerned. The same rule of law applies to a case where a child born after nine months pregnancy has brought its head when dead. If a son is born thereafter, such son is entitled to his double share in the inheritance, because it is written, "The first of his power," which is interpreted to mean that no child was born to him before who was born alive. Therefore, if after nine months of pregnancy, the child brings forth the larger part of its head while alive, a child born after him is not considered in law as a first-born child (Bekhoroth 46a).

9. A son delivered by means of an operation on his mother's abdomen, and a son born after him, are not entitled to the first birthright. The former is not entitled for the reason that he was not born in the natural way, and the latter is not entitled because there was a son that preceded him (Bekhoroth 47b).

10. The first-born, to be entitled to a double portion of the inheritance, is the one that is the first-born to the father. If, for instance, a woman gives birth to many children, and thereafter becomes married to a man who has had no children at all, the first son that is born to them is entitled to the birthright, because it is written "He is the first of his strength," and this child is the first of the father's strength (Beherot 46).

11. Even if the first-born son is a bastard, he is

nevertheless entitled to a double share of the inheritance (Yebamoth 22).

12. If it is doubtful whether it is a first-born son, as when two children were born, and it cannot be ascertained as to who was born first, neither is entitled to the birthright. If, however, at the time the children were born it was known who of them was born first, but thereafter such fact could not be ascertained, the two sons can give power of attorney to each other, and both of them divide the extra share to which a first-born son is entitled (Baba Bathra 127a).

13a. The following three are competent to testify regarding the ascertainment of the first-born son: The midwife, his mother and his father. The midwife's testimony is valid only when she testifies immediately upon their birth that this child was born first. The mother's testimony is good during the seven days following the birth, but not thereafter. The father is always competent to testify (15).

13b. Even if the father testifies to the effect that a certain man is his first-born son, and such man was not generally known to be his son, his testimony is valid. The father's testimony is likewise valid when he says that a certain man, known generally to be his first-born son, is not his first-born (Kidushin 71a).

14. If, however, the father once said concerning

a certain man that he is his first-born son, he cannot thereafter say that his first-born son is someone else (Tur).

15. If witnesses have heard a man say: "That son of mine is *my* first-born," such son is entitled to a double share of the estate. If the witnesses have heard him say: "That son of mine is *a* first-born," such son is not entitled to a double share of the estate, because it probably may be that he meant that such son was the first-born of his mother (Baba Bathra 126b).

16. If, however, in the foregoing event, there were other expressions used by the father to the effect that such son was his first-born son, as when such son has died, and in lamenting for his death, the father has said: "Woe to me that my first-born son was taken away from me," or some other similar expression, such son is entitled to a double share (L. c.)

17. If a father becomes dumb and he points out that one is his first-born son, or puts something in writing to that effect, such son is entitled to a double share (Gittin 71a).

18. If a man has two sons, one of whom is his first-born, and both sons die during his lifetime, the first-born leaving a daughter and the other one leaving a son, the grandson inherits one-third of his

grandfather's estate, the share to which his father would have been entitled, and the grand-daughter takes two-thirds of her grandfather's estate, the share to which her father would have been entitled (Baba Bathra 116b).

CHAPTER CCLXXVIII.

The First-Born Takes No Double Share in a Loan or in Profits Realized; the Effect of the First-Born Selling His Extra Share.

1. The first-born is entitled to a double share only of his father's estate, but not of his mother's. Even if he is a first-born, both of his father and of his mother, his mother's estate must be divided equally among him and the other sons (Bekhoroth 51b).

2. If one dies leaving a widow and sons, and the widow dies afterward, before she has taken the oath prescribed by law regarding her marriage contract (*vide,* Chapter 96), all the estate belongs to the father's estate; therefore, the first-born son is entitled to a double share therein (Tur).

3. The first-born is entitled to a double share only in property of which his father was actually possessed at the time of his death, but not in property which is ultimately bound to be added to the estate after his death, *e. g.,* if one of the father's relatives dies after the father's death, leaving an estate to the

father as sole heir, or if a certain indebtedness due to the father is paid after his death, in either event the first-born and the other sons take an equal share (Bekhoroth 52a).

4. It is disputed whether or not the first-born son is entitled to a double share in the offspring of cattle born after the death of his father (Tur and others).

5. If the father leaves a beast of burden, the first-born is entitled to the services of such animal for two days and the others for one day (Mordecai).

6. The first-born is not entitled to a double share in any increase in the value of the estate after his father's death. Such increase is to be ascertained and the proportionate share returned to the other sons (Baba Kamma 95b).

7. The foregoing rule of law, however, applies only to a case where the property or the chattel has assumed a material change, as when it was first a green field and it thereafter was turned into a field full of sheaves, or the like. If, however, there was material change from itself, as when a young tree has grown, or the like, in such increase in value the first-born is entitled to a double share (Baba Bathra 123b).

8. If the property advances in value by reason of expenditures made by the heirs, the first-born is not entitled to a double share thereto (L. c.)

9. The foregoing rule of law applies only to a case where the first-born has made no protest regarding such expenditures, but if he protested and said that he would prefer dividing the estate before such expenditures are incurred, and the heirs have made the improvements in spite of his protest, he is entitled to a double share of such improvements, if no material change has been effected by that. If there was a material change effected thereby, the first-born does not take a double share, either in the profits or in the losses (Tur).

10. The first-born is not entitled to a double share in his father's outstanding debts, although the loans were made on promissory notes, even if real property was collected for the indebtedness (Baba Bathra 125b).

10a. If the father have a partnership with another in business, the first-born is entitled to a double share therein.

11. If the first-born himself was indebted to his father, it is doubtful whether he is entitled to a double share thereof in the event of his father's death. He, therefore, must divide the amount of the share of the first-born with the other brother, *e. g.,* in a loan of $96.00 the share of the first-born would be $32.00. Because of doubt in law this is divided in half, which equals $16.00. This half deducted from the whole $96.00 leaves $80.00, half of which is $40.00,

as the share of the younger brother; and $40.00 subtracted from $96.00 leaves $56.00, the share of first-born (L. c. 126a).

12. The foregoing rules of law apply only to a case where there is no pledge given to secure the loan. If a pledge was given, even at the time when the loan was made, the first-born is entitled to a double share thereof (Tur).

13a. If the first-born sells his birthright before the estate is divided, the sale is valid, because the first-born is deemed to be in possession of his extra share even before the estate is divided among the heirs (Baba Bathra 126b).

13b. Therefore, if some part of the estate is divided among the heirs, whether such consists of real or personal property, and the first-born took his share equivalent to that of any ordinary heir, such act on the part of the first-born is considered as a relinquishment on his part, not only to the particular part that was divided, but also of the entire estate (L. c.).

14a. If the first-born, in the presence of witnesses, said: "Know you that the reason I share equally with my brothers in these grapes is not because I relinquish my rights as a first-born son," he does not lose his rights as regards the remainder of the estate lose his rights as regards the remainder of the estate.

14b. This rule of law applies also to a case where he makes the protest while the grapes are still attached to the ground, and the distribution is made when detached. If, however, the protest is made when the grapes are attached to the soil, and thereafter wine was made of such grapes and such wine was distributed among all the heirs equally without the first-born renewing his protest, this amounts to a relinquishing of his rights. This is analogous to a case where a protest is made regarding grapes and thereafter the first-born instead divides olives equally with the other heirs, in which case the protest is invalid and the first-born loses his rights, because it is considered in law as a relinquishment (Baba Bathra 126a).

15a. If a promissory note is produced against the father, the first-born must pay a double share. The first-born may, however, say that he is unwilling to take an extra share of the inheritance and refuse to pay a double share of the indebtedness (L. c. 124a).

15b. If, therefore, the other heirs are minors, or if the other heirs are not to be found, the debtor can collect from the first-born no more than the ordinary share of each heir (Tur).

16. If the father left mortgaged real property, it is still deemed to be in the possession of the deceased, and the first-born is entitled to his double share therefrom. If, however, there are unpaid

taxes, and it is customary for the government to seize the property in payment of the taxes, the possession is potential and not real. If the government does not seize the property, the possession of the deceased is real and not potential, and, therefore, the first-born is entitled to his extra share therein (Mordecai).

CHAPTER CCLXXIX.

Laws Concerning a Case Where a Man Contradicts Himself Regarding a Statement That So and So Is His Son, Brother or Slave.

1a. If a man says that so and so is his son, brother, or any other relative who is entitled by law to inherit him, his statement is valid, even though such a person has not generally been known to be such relative of his. It is immaterial whether he makes such statement while in good health or when sick (Baba Bathra 134a).

1b. If he becomes dumb, he may write down that such and such a person is his heir (Gittin 71).

2. If it was generally known that such and such a man was his brother or his cousin, and he denies it, his statement is of no effect. His statement is, however, effective when it relates to his son in order to disinherit him (Baba Bathra 126).

3. If the son died and left children, and the father says these are not my grandchildren, because their father was not my son, his statement is of no effect, even of the estate, since the son is dead (Magid).

4. If a man says that such and such a person is his son and thereafter says that he is his slave, his last statement is of no effect. But if he says this is my slave and thereafter he says that he is my son, his last statement is effective, although he waits upon him as a slave does, because it is presumed that he meant that his son is as serviceable to him as a slave is. If, however, such terms as "slave, son of a bondwoman," or the like, were applied to the person in question, the father cannot say that he is his son (Gittin 71).

5. If a man, when assessed for taxes, says that this person is his son, and thereafter he says that he is his slave, the latter statement prevails, because it is possible that he first said it was his son in order to avoid paying taxes for the slave. If he says while assessed for taxation that this person is his slave, he cannot thereafter say that he is his son. The last rule of law, however, is only true when his mother is not known to be of Jewish descent; but if she is reputed to be of Jewish birth, her husband cannot say that her son is a slave (L. c.)

CHAPTER CCLXXX.

Law of Evidence Regarding the Ascertainment of Legal Heirs.

1. All heirs are entitled to share in the estate if they are generally known to be so related to the deceased as to be entitled to inherit him, *e. g.,* if witnesses come to testify that such a person is known to be the son or the brother of the deceased, although such witnesses cannot testify to the pedigree of such relationship, or are even unable to testify to the correctness of such relationship, their testimony suffices to make such person recognized as the heir of the deceased (Kidushin 80a).

2. A dies leaving two sons, B and C, and it was not known that he has left any other sons. B then testifies to the effect that a certain person, D, is their brother, and C says that he is uncertain whether or not D is their brother. In such event, C is entitled to one-half of the estate; B takes only one-third of the estate, because he made an admission to the effect that there were three brothers; and D takes one-sixth of the estate. If D dies, the one-sixth of the estate he inherited reverts to B. If, however, D leaves other property, it is equally divided between B and C, because B admitted to C that D was their brother (Baba Bathra 134a).

3. If the one-sixth has improved of itself and

thereafter D has died, if the improvement is such as is severable from the property, as, for instance, grapes which have ripened to be removed from the earth vines, it is not included in the one-sixth, and B and C share equally therein. If the grapes are unripe to be severed from their earth vine, they belong to B exclusively (L. c. 134b).

4. If, in the foregoing event, C denies B and says that C is not their brother, and C accordingly takes his share out of B's share, as has been heretofore provided, and thereafter D dies, C does not inherit D, but B alone takes the one-sixth as well as any other property left by him (L. c.)

5. If one has taken possession of his inheritance, and some one comes along claiming that he is his brother and demands one-half of the inheritance, and the former denies it and says that he does not know him, the stranger is entitled to no share of the estate, even if there is a rumor to the effect that there is a brother of his alive somewhere abroad, because possession is nine points of the law (Baba Meziah 39b).

6. If one dies leaving a son and a hermaphrodite, the son is the sole heir, because it is doubtful whether the hermaphrodite is a male or a female (Baba Bathra 140a).

7a. The same rule of law applies to every case

where there are doubtful heirs, that the doubtful ones cannot recover the property from the determined heirs unless they can prove (Maimonides).

7b. Therefore, if A's son goes abroad and it is not known whether he is alive or not, and there is no other son, A's brothers are not entitled to the estate, because it is presumed that the son is still alive, unless he can prove to the contrary. But if A and his wife go abroad, and it is uncertain whether or not they gave birth to a son while there, A's brothers are entitled to the estate, when he can prove that A died, and it is not to be presumed that there is such son in existence (Tur).

8. If a man dies leaving daughters and a hermaphrodite, the latter is entitled to a share of the estate equal to that taken by any one of the daughters (Baba Bathra 140a).

9. A house collapses and kills a man and his mother. The heirs of the son claim that the mother died first, and, therefore, they are entitled to the estate left. The heirs of the mother, on the other hand, claim that the son died first, and they are entitled to the estate. In such event the mother's estate goes to the heirs of the mother who are her legal heirs without any doubt (Maimonides; see Sec. 5).

10. If a house collapse and kill a man and his married daughter, and it is not ascertainable as to

who died first (the husband claims that the father died first and the wife is the sole heir of the estate, and he heirs the wife; and the heir of the father claims that the daughter died first and the estate belongs to them); the father's estate goes to his heirs, and the daughter's husband is not entitled to anything thereof (L. c.; see Sec. 5).

11. If a house collapse and kill a man and his daughter's son and it cannot be ascertained as to who died first, the heirs of the father and the heirs of the grandson divide equally in the estate. The same rule of law applies to a case where the father is captured and dies while in captivity, and the son of his daughter dies likewise, or *vice versa,* and it cannot be ascertained as to who died first (Baba Bathra 159b).

12. Another opinion holds that the property goes to the heirs of the father only (Tur).

13. If a house collapse and kill a man and his son or any of his legal heirs, and it cannot be ascertained as to who died first, and the son have a debt or widow to pay, and there is no other fund to collect from the son, the entire estate goes to the heirs, and the widow of the son or his creditors collect nothing therefrom (Baba Bathra 157a; see Sec. 5).

CHAPTER CCLXXXI.

Alienation of Property With View to Disinheriting Legal Heirs.

1. A man cannot make one his heir who is by law not his heir. A man cannot disinherit his legal heirs, and it is immaterial whether this is done by him in sound health or when sick, or whether it was done orally or in writing (Baba Bathra 130a).

2. Therefore, if a man says that his first-born shall not take a double share in the estate, or if he says that one son of his shall not share at all in the estate together with his other sons, his words are of no effect whatever. If a man says that a certain man shall inherit him when he has a daughter, or if he says that his daughter shall inherit him where there is a son, or any case similar to that, his words are of no effect (L. c.)

3. If, however, a man has many legal heirs, such as sons, brothers or daughters, and he says, while sick, that this particular brother or daughter shall inherit him of all his brothers or daughters, his words are effective, whether this was said by him orally or written down by him. If, however, he says that a particular son alone shall inherit him, it is valid only when it was not committed to writing, but if a man commits to writing instructions that only one of his sons shall take his entire estate, such a son

is considered in law to be only a guardian for the other sons (L. c.)

4. If a man says that one of his sons shall take one-half of the entire estate and the other sons shall take the other half thereof, it is valid (L. c.)

5a. If a man says that a certain son of his shall inherit only a certain sum mentioned by him, or if he says that his son A shall inherit his own share and that of his son B, or if he says that B shall not inherit anything but that his son A shall inherit, it is invalid (Tur).

5b. But if he says that A, his son, shall inherit him, or that he shall inherit his entire estate, and B shall inherit nothing, such bequest is valid (L. c.)

6. The foregoing rules of law apply to sons who are not the first-born. In the case of a first-born son, if the father says that his first-born shall take a share equal to that of any other son, or if he says that he shall not take a double share, or if he says that he shall not inherit a double share, such bequest is invalid, because it is written: "Shall not substitute the son of the beloved as the first-born for son of the hated first-born" (Chapter 21, Deuteronimium; Baba Bathra 130).

7. Even in a locality where it is customary not to give the first-born son a double portion, such custom

is not to be followed, since it is against the laws of the Torah (Tur).

8. A man in sound health cannot either diminish or decrease the proportionate share of the estate to which either the first-born son is entitled or to which any of the heirs is entitled (Baba Bathra 130).

9a. If a sick person increases the share of one of his sons, thereby decreasing the shares of his first-born son and the rest of the sons, such bequest is invalid, because, as has been stated before, that the share of the first-born son cannot in any way be diminished (Maimonides).

9b. Some jurists, however, hold that the bequest is valid, but the extra increase is deducted from the shares of the other sons, and the share of the first-born son remains intact (Tur).

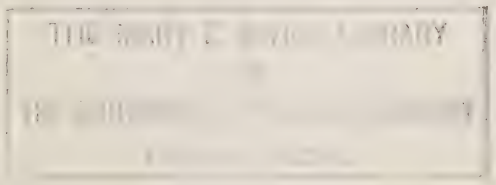
10. The foregoing rules of law apply only to a case where the property is given by him as their share of the inheritance. If he gives to them as a gift, the conveyance is valid. If, therefore, a person orally divides his property in the nature of a gift, while being sick, and gives to one more and the other one less, or if he gives the first-born a share equal to that of the other sons, or if he gives it to one that is not entitled to inherit him, the conveyance is valid. But if he says that it is given to them as their inheritance, the bequest is invalid (Baba Bathra 129).

11. If the language in the instrument of conveyance is conflicting, some expressions purporting it to be a conveyance, while others purport it to be a will, the former prevails; *e. g.,* if it reads, "This field shall be given to so and so, and he shall inherit it," or if it reads: "He shall inherit it, it shall be given to him, and he shall inherit it," or if it reads, "He shall inherit it and it shall be given to him," it is considered in law as a conveyance by gift and it is therefore valid (Baba Bathra 129a).

12. If a man has three fields and three heirs and he says thus, "One of my heirs shall inherit one field, the second field shall be given to the second heir, and the third heir shall inherit my third field," the conveyance is valid, because it is considered as a gift to all the three.

13. This rule of law, however, is only true when no unreasonable length of time has elapsed between one saying and the other. If he has not said it immediately, one following the other, it is not valid unless words having the import of a gift have been used with relation to all the three fields (L. c.)

14. The foregoing rule of law applies only to a case where three fields are given to three different people, but if three fields are given to one man, or if one field is given to three men, it is not at all necessary that the conveyances shall be made immediately following one another (Tur).



15. If one writes an instrument to the effect that his daughter shall take half of one share, like any one of the other sons, she is entitled to get them; it is considered in law as a mere inheritance, and, therefore, creditors and the widow of the deceased have priority over such gift, and the father can sell her fortune before he dies (Mordecai).

16. If the document reads, "shall hold the property," or "shall divide the property," it is considered in law as a gift (Tur).

17. If a man conveys his property in the nature of a gift to a stranger and leaves nothing for his heirs, the conveyance is valid (L. c.)

18. If a man makes a gift to the son of his brother to the effect that he is the legal heir, and writes that this gift shall have the effect of disinheriting him, thereby desiring that his estate shall pass to the sons of his sister, the son of the brother inherits the entire estate in the event the man dies thereafter. The reason for this rule is that since he failed to provide that the sons of his sister should take his estate for a gift, therefore, the son of his brother remains the sole heir, takes all the estate, and the sister's children are considered as total strangers (L. c.)

CHAPTER CCLXXXII.

Not to Disinherit the Legal Heirs.

1. It is preferable that a man shall not give his property away to strangers where there are heirs, although the heirs are guilty of bad conduct; but if he does transfer it, it is valid (Baba Bathra 133b).

2. In a will which is made for the purpose of disinheriting a son and substituting a brother, it is unethical to act as an attesting witness thereto, even when the son conducts himself improperly and the brother is a Sage (L. c.)

3. If one writes in his will that his estate shall be disposed of to the best advantage, the estate shall be distributed among the heirs, because nothing better could be accomplished with an estate (Tur).

CHAPTER CCLXXXIV.

The Death of the Deceased Must Be Proven.

1. Heirs cannot inherit a person unless they produce evidence to prove that he has died. If the heirs have heard it said that so and so has died, or if a woman came and said that her husband has died, such evidence is not enough to have his estate distributed among the heirs (Maimonides).

2. If a person drowns in very deep waters, and witnesses come to testify that they saw him drown-

ing and they say that the memory of him was lost, such testimony suffices to make his estate pass to his heirs (L. c.)

3. If witnesses come and say that they saw a man fall into a den of lions or tigers, or they saw him hanging and birds ate of his flesh, or that he was killed in war by a stab or otherwise; and they say that they could not recognize his face, but that the man had some specific marks of identification, and they recognized him by those, the estate of such man is distributed among his heirs (L. c.)

CHAPTER CCLXXXV.

Disposition of the Property of a Captive or of One Who Has Disappeared.

1. If a man was captured and it was heard that he died there, as a result of which the heirs take possession of the estate, such heirs are to be left in the possession thereof. The same rule of law applies to a case where one flees from his town in order to escape danger. If, however, one vanishes from his home voluntarily and there a report was circulated that he had died somewhere, and his heirs as a result took possession of his property, the court takes it away from them until they produce evidence to prove that such person is dead (Baba Meziah 38b).

2. It is the duty of the court to take care of the

property of the one that has been captured or of one that has gone in order to escape danger. All the personal property is entrusted to a trustworthy person by the court. The apparent heirs are put in the possession of the real property, and they are to take care of the same until it is either established that he has died or until he returns. When he returns then it is to be ascertained whatever work they did and whatever they have consumed thereof, as is the custom of that locality with all persons taking land to farm (L. c.)

3. If the one that was captured or the one that has escaped has left standing corn in the field ready to be cut, or he has left any product of the soil about to be removed therefrom, it is the duty of the court to take charge of the property and to appoint a guardian. The guardian removes the products from the field, sells them, and the money realized is put by the court together with the other personal property left. When all that has been accomplished, the next of kin is permitted to take charge of the property. The reason the next of kin is not permitted to take of the property before is that the relative might remove the products and use them as though he had taken possession of them when they were already detached from the soil (Baba Meziah 39a).

4. If there are court yards, inns, stores or the like which are ordinarily rented to others and, there-

fore, require no extra attention or work, the heir is not permitted to take charge of the same if such property is not generally leased to others, because the heir might collect the rents and use them. But it is the duty of the court to appoint a guardian and the rents collected by him are deposited in court and kept there until the heir succeeds in proving that the person whom he seeks to inherit has died, or until the person himself returns (Maimonides).

5. A relative in such case is permitted to take charge only of fields, gardens, vineyards or the like, in the nature of a person obtaining land to farm, in order that the property shall not remain uncultivated and deserted (L. c.)

6. If a man goes away of his own free will leaving some property and it is not known where he went to, no relative of his is permitted to take charge of his property. If any of the relatives did take charge of the property, he is dispossessed therefrom. Nor is it the duty of the court to appoint a guardian to take care of his property, no matter whether it consists of realty or personalty, for the reason that he has left of his own free will (Baba Meziah 39b).

7. In the foregoing event the personal property must remain in the possession of the present possessor until the man returns or until the heirs are able to prove that the man has died. Regarding the real property, whoever he has left in charge is per-

mitted to stay there without paying rent for the occupation of the same. Regarding a field or a vineyard in which there was a tenant who let it to farm, the field must be left in the status it was when he had left until he returns. If he left a field or property vacant, they should be so kept vacant, because he knowingly permitted his property to be destroyed, and there is no obligation resting on any one to return a lost article to the owner when the owner knowingly permits such article to get lost (L. c.)

8. If the man during his absence has become heir to some property and he was not aware of such fact, it is equivalent to a case where a man is taken into captivity and the court must appoint a guardian (Rabben Yerucham).

9. If a man goes to a place which is absolutely safe and free from all danger with the intention of returning, but has failed to return, such a case is equivalent to one in which the man was forced to leave, because it is presumed that the reason he has not appointed any one to take care of his property was because he intended to return immediately (Tur).

10. If there was a report to the effect that the man has died there, it is the duty of the court to take all the personal property and entrust it into the care of a trustworthy person, and the realty is left in the care of the next of kin in capacity of a lessee

letting land to farm, until the latter produces evidence to prove that the man has died, or until the man returns (Baba Mechia 38).

11. The next of kin is not permitted to take charge of the personal property only in the capacity of being a relative, but he is not incapacitated of becoming a guardian thereby (L. c. 39).

12. In every case where the next of kin is put in the possession of the property no minor shall be appointed for such task, because he might ruin the property (L. c.)

13. If the person vanished is a minor, no next of kin can be permitted to take charge of the property, lest the latter one may claim that this is the share he obtained by inheritance (L. c.)

14. Even the next of kin to the next of kin of a minor is not permitted to take charge of the minor's property; *e. g.,* if there were two brothers, one a minor and one an adult, and the minor was either taken into captivity or was forced to flee, the adult brother is not permitted to take charge of the property, for the reason that a minor is unable to make a legal protest against the unlawful possession of his property; and by reason of that the adult, after having been in possession for some years, may claim that the property was a share of the inheritance he obtained. Even the son of the adult brother is not

permitted to take charge of the property, because he might claim that he has inherited the same from his father (L. c.)

15. If, however, the inheritance has not been as yet divided among the heirs, and all the heirs are supported from the same common fund, the next of kin may be put in the possession of the minor's property (Nimuke Joseph).

16. The next of kin is not permitted to take possession of a minor's property only when such possessor is entitled to use the fruit of the property, but he may be appointed as a guardian when he derives no benefit at all from such appointment (Tur).

17. The next of kin may likewise be appointed to take possession of a minor's property if such property is not a part of the minor's inheritance (L. c.)

18. The next of kin is also permitted to take into his possession the personal property of a minor. And the next of kin has preference over a stranger (Baba Meziah 70a).

19a. If the minor has an inheritance from his mother's father, the father is not permitted to keep the property under his care; the court must appoint a guardian.

19b. There are some authorities who hold that if the minor has a father living, the court does not have

to investigate the case and trouble itself with his property, unless the father has a bad reputation (Tur).

20. It has happened that a certain old woman, who had three daughters, was taken into captivity with one of her daughters. Another one of the daughters died and had left surviving her a minor son. The sages then decided as follows: The third daughter still alive cannot be put into the possession of the estate, because it is probable that the mother is dead and that the minor grandchild is the heir to one-third of the estate, and the law is well established that an heir cannot be put in the possession of an estate belonging to a minor. The minor cannot be put in the possession of the estate because it is probable that the old woman is yet alive, and the law is well established that a minor cannot be put in the possession of the estate belonging to one taken into captivity. Since a guardian must be appointed for the share belonging to the minor, the same guardian must be appointed to take charge of the entire estate belonging to the old woman. Thereafter it was confirmed that the old woman died in captivity, and of the daughter it was uncertain. The Sages then decided that the daughter who is still alive shall take possession of one-third of the estate, which forms her share of the inheritance. The minor likewise takes possession of one-third, which is his share of

the inheritance. For the one-third belonging to the daughter that was captured, a guardian must be appointed for it is probable that the captured daughter also died in captivity, and as a result the minor is entitled to one-half of her third (Baba Mechia 37).

CHAPTER CCLXXXVI.

How Minor and Adult Heirs Are to Receive Support From the Estate.

1. If a man dies leaving minor and adult sons or daughters, and the adult children require more expenditures for their clothing while the minors require more expenditures for their food, they are not to be supplied with food and clothing out of the bulk estate, but each and every one of the heirs receives his or her share of the estate and he or she can dispose of the same as seen fit (Baba Bathra 139b).

2. In the above-named event, it is disputed whether or not the same rule of law applies to a case only where there was a protest made to that effect, or it applies likewise to a case where there was silence before and claim afterwards (Tur).

3. The foregoing rule of law applies only to a case where the estate is not benefited by the costly clothes of the adult sons, but in a case where the eldest one has charge of the management of his father's affairs; and the estate is benefited by his

costly clothes, because they give him more prestige; he is entitled to receive his clothes from the bulk estate. Even in such an event, however, the other heirs may protest (L. c.)

4. If the adults married after their father's death, and have taken the expense for such marriage out of the estate, the minors are likewise entitled to receive such sums of money for their marriages and the balance is divided equally among the heirs (Baba Bathra 139).

5. If, however, the adults married during the lifetime of their father, the minors cannot thereafter claim that they too are entitled to receive their marriage expenditure from the estate, but whatever their father gave during his lifetime is not taken into account after his death (L. c.)

6. If a man promises to give to his son a certain sum of money upon his marrying, and the man dies before such marriage takes place, such dowry is to be taken out of the share belonging to the son and not out of the entire estate, because title to such dowry has not yet passed to the son during his father's lifetime (Rabbi Moses Iserlish).

7. If a son is imprisoned for non-payment of a penalty and his father pays the penalty for him and frees him, and thereafter the father dies, such sum of money is to be deducted from the son's share of

the inheritance. It is presumed that he has advanced such money as a loan to his son and not as a gift, unless there is evidence to the contrary (L. c.)

8a. If a father incurs expenditures in making a repast on the occasion of his son becoming engaged and the son receives certain gifts during the lifetime of the father, and thereafter such gifts must be returned in reciprocation after the father's death, such gifts are to be sent out of the bulk estate (Baba Bathra 144b).

8b. But if the son himself has paid the cost of the repast, the gifts are to be sent out of the share belonging to him (L. c.)

9. If a father sends marriage gifts in the name of one of his sons, and if such son in return receives marriage gifts after the death of his father, they belong to him exclusively and not to the estate. But if the father has sent the gifts in the name of all his children, not mentioning any names, the gifts received by the son belong to the estate (L. c.)

CHAPTER CCLXXXVII.

A Man Dying Leaving Minor and Adult Children.

1. If a man dies leaving minor and adult sons, and the adult sons have improved the estate through their efforts, the entire improvement belongs to the estate, and they are not even entitled to be compen-

sated for their work, even if the expenditures for the improvement advanced by them were from their pockets (Maimonides).

2. If, however, at the time the adults took charge of the estate, they said: "See what our father has left for us; behold, we will do work therein and receive our support," the entire improvement belongs to them. This, however, is only true when they themselves have advanced the cost for the improvement, but if it was taken out of the estate, it belongs to the estate (L. c.)

3a. The foregoing rule of law is according to the opinion expressed by Maimonides. All jurists, however, hold that the improvements brought about by the adult sons belong to the estate only in the event they hired laborers to work on the estate and paid them out of the funds belonging to the estate, or when they dealt with the merchandise belonging to the estate. But if they themselves spend the money or if they personally worked on the estate in order to improve it, such improvements belong to them and not to the estate (Choshen Hamishpat).

3b. If the means by which the adults have caused the improvement on the estate were such as could be brought about by the minors as well, if they had been notified by the adults, for instance, if the work consisted in taking care of the fields, gardens and the like, the improvement belongs to the entire estate,

for it was the duty of the adults to notify the minors of their intentions. And this rule of law holds true even in case the adult brothers have done the work in person (Baba Bathra 144).

4. If, however, the adults have said to the minors: "See what our father has left for us; behold, we shall do work on the estate and derive the benefits therefrom," the entire improvement thus brought about belong to themselves, although the expenditures incurred by them were taken out of the estate (Tur).

5. If all the heirs are adults, it is not necessary that such declaration shall be made in the presence of the court. It is sufficient when made in the presence of two or more witnesses. If there are some minors among the heirs, such declaration must be made in the presence of the court (Maimonides).

6. The foregoing rules of law have application only to a case where all the heirs are supported from the common fund of the estate, but if they are not so supported, the improvement belongs to the estate; even in the event the adults have themselves paid all the expenditures incurred by them, and it is assumed if the advance is more than the expense, he takes for the expenditures (Tur).

7. If one of the heirs has many children and such children have improved the estate, their father cannot claim from the estate the improvements occa-

sioned by them, and the other heirs cannot claim compensation for the food consumed by such children, but everything is considered as a part of the common estate (Maimonides).

8. If one of the brothers makes a gift to a certain person, and the other brothers were present and kept silent, it is considered in law as a relinquishing of rights to that particular amount and the entire estate bears the loss of the same (Nimuke Joseph).

9. If a man inherits his father's estate and improves it by planting and building thereon, and thereafter it becomes known to him that he has brothers living somewhere abroad, such improvement belongs to the estate, if such brothers are minors. If the brothers are adults, he is considered in law as a tenant hiring land to farm and he is entitled to such rights, for the reason that he was not aware of the fact that he had brothers alive (Baba Meziah 39b).

10. If one of the brothers takes possession of the estate belonging to a minor and makes some improvement thereon, such improvement belongs to the estate, and he is not entitled to the rights of a man hiring land to farm, because he has taken charge of the property without permission or legal justification (Maimonides).

CHAPTER CCLXXXVIII.

How the Wearing Apparel of the Heirs Are Valued.

1a. When the brothers divide the estate, the clothes worn by the heirs are valued and are considered as a part of the estate, but whatever is worn by the children or wives of such heirs is not to be valued, because they have already obtained title thereto, if the estate is benefited by the clothes of the adult son (see page 285, Sec. 3; Baba Kamma 11b).

1b. This rule of law applies only to clothes worn by them on week days, but clothes worn by them on the Sabbath or Festivals are to be valued as a part of the estate (Yerushalmi, L. c.)

2. If a man makes a will to the effect that a certain man is to get a certain tree or a certain field of his estate, and the heirs have divided the estate among themselves without fulfilling the bequest of the testator, the distribution of the property is invalid and void. The heirs must first give the man whatever he is entitled to get and thereafter they must make a new distribution of the estate (Ketuboth 109b).

3. If one of the heirs is willing to give the man whatever he is entitled to get under the bequest and is willing that the other heirs should reimburse with money for their share, it may be so done, and the

distribution is then considered legal and effective (Tur).

CHAPTER CCLXXXIX.

Distribution of Estate When There Are Adult and Minor Heirs.

1a. If there are minor and adult heirs and they are willing to divide the estate among themselves, it is the duty of the court to appoint a guardian for the minors. Such guardian has a right to select of the estate whatever part seems to him to be the best (Kidushin 42b).

1b. Some authorities, however, hold that the estate is distributed by throwing lots (Tur).

2. When the minors become of age, they cannot protest against the distribution, because they obtained their share by the order of the court (Kidushin 42b).

3. If the court erred in the valuation of the property to the extent of one-sixth less than the real value to the disadvantage of the minors, such minors may demand a re-distribution of the estate when they become of age (L. c.)

4. A guardian, even when appointed by the father of the minors when he was alive, has no right to distribute the property among them without first ob-

taining the consent from the court; unless he was appointed for this very purpose (Ran).

5. If all the heirs are minors, the estate is not to be distributed to them until they become of age; unless it is the opinion of the court that the heirs may be benefited by the distribution of the estate (Tur).

6. In every case, when the minors reach the age of thirteen years they may make the distribution in person without requiring a guardian or a court order, because distribution of an estate is not considered in law as a sale of property (Nimuke Joseph).

CHAPTER CCXC.

Laws Concerning Guardians.

1. If a man dies leaving minor children or he leaves his wife in a pregnant state, if the deceased failed to make such appointment, it is the duty of the court to appoint a guardian to look after the interests of such minors, because the court is deemed to be the father of orphans (Gittin 52b).

2. The court is not disqualified by law from acting as guardian; nevertheless, if there is distribution to take place, or if there are other legal matters to be taken up by the court, it is preferable that another guardian be appointed (Rosh).

3. By the term "court" is meant either a duly

appointed judge of the community or any other competent judge; but any body of three men cannot style itself a tribunal and take charge of the estate belonging to minor orphans (Rosh).

4. If the testator at the time of his death said that his minor heirs should get their proportionate share of the estate and do with it whatever they see fit, such will is valid, and the court need not appoint a guardian for them (Maimonides).

5. If the testator appointed a minor or a woman as guardian for his minor heirs, the appointment is valid (Gittin 52b).

6. If a man says to a sick person: "Are you willing that I should take control of your property?" and the sick person says "Yes," this is considered in law as an appointment of a guardian (Tur).

7. If the estate of the deceased was managed by a superintendent, when he was alive, the manager is not permitted to remain guardian for the heirs, but it is the duty of the court to appoint another guardian for them; because he cannot be named the guardian appointed by the father unless the guardian was appointed by him immediately before his death (Rosh).

8a. The court cannot appoint as guardian a woman, or a minor, or an ignorant person who is suspected of violating laws and committing crimes (L. c.)

8b. But the court must appoint a man who is trustworthy and courageous; who is able to protect and defend the interests of the orphans, and who is versed in business so that he should be able to take good care of the estate and make profitable investments (Baba Meziah 70a; Ketuboth 109a).

9a. When the guardian is appointed, an inventory must be made determining the value of the real and the personal property, the debts and any other thing or things that are entrusted to him (Tur).

9b. An agreement with an exact copy thereof is to be prepared, one of which is given to the guardian and the other is left with the court (L. c.)

10. The guardian is permitted to buy for himself costly garments out of the estate in order that he may be respected; providing, however, that the estate is benefited by such respect (Gittin 52b).

11. If there is a report to the effect that the guardian appointed by the court is living above his means, he is to be removed and another one appointed in his stead, for there is a suspicion that he makes personal use out of the estate belonging to the orphans (Maimonides).

12. A guardian appointed by the father is not removed on the mere suspicion mentioned above. If, however, witnesses testify to the effect that he causes

losses to the property of the orphans, he is removed (L. c.)

13. It is the opinion of some authorities that even a guardian appointed by the court is not removed on mere suspicion, unless there are witnesses to testify to the effect that he causes undue losses to the property (Tur).

14. If the guardian lends money to an untrustworthy person, the court is empowered to compel the creditor to return the money to the estate (Rabbi Moses Iserlish).

15. If the court appoints a respectable person as a guardian and thereafter the man turned out to be indecent—as a spendthrift, breaking vows and the like—it is the duty of the court to remove him and appoint another one in his stead. All such things are entirely left to the discretion of the judge, because all judges are considered as the fathers of minor orphans (Maimonides).

16. When the court appoints a guardian, he takes possession of all the property belonging to the heirs, whether real or personal; and he has a right to buy, sell, build, demolish, hire out, plant, sow and do anything which in his judgment is profitable for the heirs. The guardian provides the orphans with board and all other incidentals. Such expenditures are to be made in accordance with the size of the

estate and in accordance with their standing in life. He shall neither be too extravagant nor miserly in incurring such expenditures (Gittin 52b).

17a. If the deceased leaves cash money, the court is not permitted to appoint a guardian to take care of the same (Baba Meziah 5a).

17b. Some authorities, however, hold that even in such an event, a guardian must be appointed and he can spend some of the money for support, and with the balance real property must be bought and placed in the care of the guardian, and the income shall be used for the benefit of the orphan (Tur).

18a. All personal property belonging to the heirs must be appraised and sold under the supervision of the court (Ketuboth 101b).

18b. The above rule of law, however, applies only to a case where there was no guardian appointed. In the event there is a guardian appointed, he may sell the property without the supervision of the court for whatever price that he sees best for the benefit of the heirs (Tur).

19. Personal property or merchandise belonging to minor orphans must not be conveyed over the seas or through any possible dangerous road (Maimonides).

20a. The guardian may sell cattle, fields and vine-

yards for the purpose of supporting the heirs (Gittin 52b).

20b. And the sales take place as follows: First the cattle should be sold, and then real property; and it all depends upon the judgment of the guardian to sell first whatever is less profitable to the heirs (Tur).

21a. Cattle and real property must not be sold for the purpose of keeping the money realized therefrom in any safe place (Gittin 52b).

21b. Real property may be sold for the purpose of buying oxen for tilling other real property, because oxen are of prime importance in the cultivation of land (L. c.)

22. It is not permissible to sell one field, although bad and far from the estate, in order to buy with the proceeds thereof a good field near the estate; because it is probable that the new field will not turn out to be as profitable as the first one (L. c.)

23a. If a man has a claim against the orphans, the guardian has no right to appear and plea for them, because he might lose. If, however, the guardian appeared for them and won the trial, the judgment is valid; and if he finds libel, the judgment is void (Maimonides).

23b. The guardian is believed as a witness if he knows that the money belongs to the orphans (see Jewish Code, Chapter 37, Sec. 155).

24a. A guardian is permitted to expend money out of the estate for the purpose of getting the orphans accustomed to be God-fearing and observing His commandments. He may, therefore, buy for them Five Scrolls of the Law, Lulow, Suco, Schefor, Fronteles, Mezuzo, Chichis, etc. (Gittin 52a).

24b. The estate cannot, however, be taxed for charitable purposes, even in the most urgent events; because in the former case the expenditures are limited, but in the latter case of charity, the taxation may be unlimited (L. c.)

25. When the orphans become of age, the guardian turns over to them whatever is left of the estate, and he is not bound to give them an itemized statement showing the expenditures made and the profits earned, but he simply states to them that this is the balance of the estate (Maimonides).

26. The guardian upon surrendering the estate must take a solemn oath to the effect that he has not converted any part of the estate to his own use (Gittin 52a).

27. The oath taken by the guardian, as herebefore stated, refers only to a case where he was appointed by the court; but if the guardian was designated by the testator, he is not bound to take an oath upon surrendering the estate, unless there is a definite assertion made by the heirs to the effect that he has converted some of the estate to his own use (L. c.)

28. If anything belonging to the estate was lost, the guardian must take the general oath imposed by law upon bailees (Tur).

29. If the guardian is himself interested in the profits of the estate, he must take the oath upon surrendering the estate, even in the event he was designated as guardian by the testator and the heirs make no positive assertion that he converted property belonging to the estate to his own use (Tur).

30. Although it is not incumbent upon the guardian to submit an itemized statement to the heirs, it is his duty that he, for himself, should make a careful accounting and be extremely cautious in preparing such schedules in order to ascertain what is still left of the estate (Maimonides).

31. The court cannot appoint a guardian with the condition that he should be exempt from taking an oath, unless they were unable to get a suitable person who would be willing to be guardian and take an oath; they may appoint one without having to take the prescribed oath (Tur).

32. A guardian, whether appointed by the court or designated by the father, is not liable in cases of loss and theft, but he is liable in cases of gross negligence (L. c.)

33. A guardian, whether appointed by the court or designated by the testator, before he has taken

possession of the estate or before he has transacted any business for the heirs, has the right to resign. But after he has taken possession of the estate or after he has transacted some business for the heirs, he has no right to resign (L. c.)

34. The foregoing rule of law refers only to a case where the guardian remains in town; but if he removes from the town, the court has to appoint another guardian in his stead (L. c.)

35. If the minor heirs, of their own accord, have boarded with a certain man or woman, and such person has made some efforts on their behalf, it is considered in law as a guardianship in every respect (Gittin 25a).

35a. But it is disputed whether he has to take an oath or not (Ra'abad and Rosh).

36. If the minor heirs board with a certain man and such man expends his own money for their support, he is to be reimbursed therefor (Tur).

37a. If a minor becomes of age and he proves to be very extravagant, and on the whole is guilty of ill-conduct, the court has no right to withhold the estate from him. Neither has the court a right to appoint a guardian for him, unless the testator expressly said that the estate should not be given to him unless he proved to be a worthy person, or until the expiration of a certain definite time (Maimonides).

37b. Nevertheless, it is the duty of the court to rebuke him and to instruct him, and to lead him on the right way (L. c.)

38. An insane or dumb person has in law the status of a minor, and a guardian must be appointed for him (Ketuboth 48a).

39. If a guardian dies and his son produces a book wherein there is an entry to the effect that his father has expended a certain sum of money for the heirs, such entry is not sufficient to hold the estate therefor; because it is probable that his father was paid for the expenditures, but he neglected to cross out the item from his book (Tur).

40. However, the guardian during his lifetime, is trusted and believed for whatever he says concerning the expenditures he made for the minor heirs, and he is reimbursed, by taking an oath (Rambam).

SUPPLEMENT TO CHAPTER CCLXXXIX.

1. If all the brothers are not present and the ones that are present want the estate distributed, that can be done in the presence of three men who are experts in appraising, even though they be ignorant of the law.

2. If the property is divided in the presence of less than three men, the distribution is of no value.

3. If the estate was in cash coin of one land, then it can be divided in the presence of two men (Baba Mechia 69b).

4. If, after the distribution is made, one of the brothers who was not present claims that the property was not correctly appraised and says, "I will give more for the estate," the distribution is void. Another lot must be made. Without any reason the distribution cannot be void.

5. If the heirs distributed his estate and afterwards another man comes from abroad with evidence that he is a brother, even if he has three fields, and one takes one, and the other takes one, and the third is divided between the two, and he makes a lot and the third (new) brother wins the third field; if the two brothers agree, they can make the distribution null, even if the new brother is satisfied to leave it as it was; because the distribution was made by mistake (Baba Bathra 106).

6. And that same law applies when after the distribution is made a creditor of the father takes away the share from one of the heirs because that was mortgaged for his debt. Another distribution must be made (Baba Bathra 107).

7. If the heirs receive some amount on account of their shares in the estate before the distribution takes effect, and some of them do not receive any-

thing, and some of the estate is deposited by a bailee and some brothers claim to take out of the deposit the expenses of the father's burial, and the other heirs who did not receive anything claim that the deposit shall not be touched until after the burial takes place, and a correct reckoning made, and that each one shall give his share of the expenditure of the burial from his own pocket, the right is with the heirs who have not received anything.

8. R and his wife and four daughters were in one house and the house collapsed and it is uncertain who died first or last. The heirs of R claim that R died last and R inherits all the estate from the decedents and they are the legal heirs of R, and the heirs of the wife claim that the woman died last and she inherits all the estate from the decedents and they are entitled to the estate, then the estate must be equally divided between the two heirs.

9. If, however, the daughters were married and their husbands demand the inheritance, then the estate must be divided into six parts, and four parts shall be given to the husbands and one part to the heirs of R and one part to the wife's heirs.

CHAPTER CCXCI.

The Law of Guardian Without Compensation.

1. A guardian who serves without compensation is not liable if an article is stolen or lost, unless it is stolen or lost through gross negligence (Baba Mechia 93).

2. A guardian who serves without compensation, when silver, or a vessel, or cattle is entrusted to his care, and he undertakes to guard them, even if he does not expressly state that he will guard them, but agrees to take care of them, *e. g.,* he says, "Leave them with me," comes under the law of a guardian without compensation. But when he says, "Leave it with you," or he says, "Leave it, the house is for you," or he says, "Leave," he is not included under the law of a guardian without compensation, even of oath (L. c. 80).

3. If a man was going on a journey and a comrade says to him, "Take my shoes with you," and the other says, "Leave them on my ass," and he leaves them without receiving them in his hands and not binding them, and the man with the ass was gone for a little while for his necessity, in the meantime the shoes get lost, he is liable to pay for the shoes, because it is gross negligence. Some other authorities hold that he is not responsible.

4. If a man request from his comrade permission to bring in his cattle or fruit to his courtyard without stipulating about the guarding, and if anything is stolen or lost, he is free even from an oath (Baba Kamo 47).

5. If a man gives a golden dinar for guarding, and he says, "Take care of it because it is silver," and afterwards, on account of gross negligence, it is lost, he must only pay for a silver one. Because he can say that "I have taken responsibility for only a silver one," therefore he must pay only for a silver dinar (L. c. 86).

6. If he destroys the dinar with his hand he must pay for a golden one (Baba Kama 62-1).

7. If a man places in his comrade's charge vessels or money, and he afterwards comes for them and the guardian says, "I do not know where I left them, you wait for me until I find them," he is liable for them on account of gross negligence (Baba Mechia 42).

8. If a thief steals the bailment and if he raises an outcry, he will receive some protection for saving the bailment; but if he does not do so, he is liable on account of gross negligence.

9. However, if he does not receive protection without compensation, only for compensation, he is not liable.

10. If the guardian, through gross neglect, did

not watch the cow carefully and she is out of the stable, in the field, and died naturally, he is not liable. Even in the beginning, it was gross negligence, if afterwards she died in the natural way in the field, he is not liable, because the same thing could have happened in the stable.

11. However, if after he had gone from the stable the cow was stolen, and afterwards she died in the house of the thief in the natural way, he is liable. Because if she was alive when she was stolen by the thief, and she is lost to the owner anyway.

12. If he takes the cow up on a mountain and she falls down and dies, it is gross negligence, and he is liable. But if she dies on top of the mountain he is not liable (Baba Mechia 73).

13. If she goes up the mountain herself without anyone forcing her, that is not gross negligence; therefore, the guardian is not liable (L. c.)

14. If the same guardian left the cow and go to the city; in the meantime if a lion or a wolf kill the cow? If he come in the city in the regular time when all the working men come in, he is not liable, even when he was there he can save the cow. If he come in the city not in the regular time when all working men come, if he was there he can save it, he is liable; if he cannot save it he is not liable (Baba Mechia 73).

15. The right way for guarding is accordingly of

the bailment, *e. g.,* if the bailment is beams or stones, the place for them is in the front yard. If it is big bunches of cotton, the place for them is in the rear yard. Some other things must be kept in the house and some others in the bureau under the lock; *e. g.,* silver and gold. Silk dresses must be put on a hanger because of the risk of rats (Baba Mechia 42).

16. If the guardian leave the bailment in some unsafe place and afterwards the articles were stolen or lost accidentally, *e. g.,* a fire burns the whole house, he is liable through gross negligence (Baba Mechia 42).

17. Even if he leave the bailment with his articles together in one place, he is liable, because he is permitted to put his own money in an unsafe place, but not the others.

18. Money in cash should be kept in a savings bank. If, afterward, the bank fails, the guardian is not liable.

19. Every bailor is permitted to give the bailment to any of his family supported by his table.

20. If the bailee deliver the bailment for guarding to his small children or to his servant or to any relative not supported by his table, and afterward it becomes lost or stolen, he is liable.

21. If the guardian permitted strangers to come in the rooms where the bailment is left, and the arti-

cles are stolen, even though the strangers are known to be honest and responsible, he is liable.

22. If the bailee return the bailment to the wife of the bailor, and afterwards it is stolen or lost, he is not liable.

23. If it is known by the bailor that the bailee does not guard it himself, but gives it to another who is not supported by his table, and afterwards the article is stolen by the one to whom it was entrusted, the bailee is not liable.

24. A man has given money to a bailee for guarding, and the bailee gives this money to his mother without notifying her that the money is not his, and afterward the money was stolen or lost, the Sages decide that the bailee is not liable, because he is permitted, according to the law, to give the money to one of his family supported by his table, and the mother cannot be responsible for the money lost, because she thought the money belonged to her son; therefore, she gave more attention to the guarding of the money (Baba Mechia 42).

25. Therefore the Sages decide that the bailee must take an oath that he gave it to his mother, and the mother must take an oath that she hid it and that it was stolen; and neither is liable (Baba Mechia 42).

26. If the bailee notify the members of his family that the article is a bailment and they do not guard

it carefully according to the law of guarding, the members of the family are liable to pay, in case it is stolen or lost; but not the bailee, because he has the right to entrust the bailment to one of his family supported by his table (L. c.)

27. It is disputed if the members of the family are poor and not able to pay. Some Sages hold that the bailee must pay, because if he be not liable, everyone will entrust the bailment to the members of his family and he will destroy them and he will not be liable. Other Sages hold that he is not liable to pay for the gross negligence of the members of his family (Tur and Rambam).

28. A man gives the bailee hops to put in storage, and afterward the bailee commands his servant to put from my hops in the beer, and the servant makes a mistake and puts the hops from the bailment in the beer and the beer becomes a little spoiled, the Sages decide the servant cannot be liable, because the owner does not notify him to put from that pile or not from that pile. And the owner cannot be liable because he notified "put from my hops"; therefore, the owner must pay for the hops according to the benefit, not according to the value (Baba Mechia 42).

29. If the beer is all spoiled, he is not compelled to pay anything for the hops, but he must take an oath that it so happened, and he is free from liability (L. c.)

30. If there is some evidence that the bailee understood that he put in the beer the hops from the bailment, *e. g.,* if the pile of the bailment was near and his pile was far and if the servant come quickly from his way, that is proof that he used the hops from the nearest pile; therefore, he is liable (L. c.)

31. If he was compensated for guarding, some authorities hold that he must pay the value of the hops, because he must notify his servant to "put from that pile of hops in the beer and not from that other pile."

32. If one guardian delivers the article of the bailment to another guardian, even if the first guardian was without compensation and the other is compensated, and anything happens to the article, the first guardian is liable, because the bailor could say, "You entrusted it to me on oath, not the other," even if the other is known to be an honest and trustworthy man. If the first guardian gives over the article to the other guardian in the presence of the bailor, and he was silent, and afterwards the article was lost or stolen, the first guardian is not liable.

33. If it is known to the bailor that the bailee give over the bailment to the other, *e. g.,* if the first was without compensation, he is not liable; but if the first was given compensation and the other was not, then he is liable.

34. If there are witnesses that the second guar-

dian got the article in good condition, according to the rule of guarding, or if the first guardian saw that the second got it in good condition, he can swear that it is lost, and he is not liable.

35. If an oral agreement is made between the bailor and the guardian without compensation, that he must be responsible even for accident, that is effective (Baba Mechia 94).

36. If a man gives a bailment to his comrade, either with compensation or without compensation, and at the same time or before he hire the owner, or the owner serves him as a favor, if afterward something happens to the article, *e. g.,* it is lost, stolen or meets with some accident, even if the loss happened when the owner is no longer in the employ of the bailee, he is not liable. If the owner was hired afterward, he is liable (Baba Mechia 95).

CHAPTER CCXCII.

The Bailment is Forbidden to be Used.

1. The bailee is forbidden to use the bailment article, and if he uses it, even if he has not in his mind to steal afterward, he is liable, even if accident happens to the bailment article (Baba Mechia 41).

2. Even if he does not use the article, but makes some manner of settlement, *e. g.,* he raises the article with the idea of using it so as to create a shortage, he is liable.

3. If, however, he raise the article with the idea of using it, but not to create a shortage, he is not liable from the time of raising the article, only from the time when he uses it; because, he is like a borrower without the consent of the owner, which comes under the law of robbery.

4. If a man gives to a bailee in storage a barrel of wine, and the bailee takes a cup of wine out of the barrel without raising the barrel, and afterwards the barrel is broken and it is all spilled, he is liable to pay only for the cup of wine. If, however, he raised the barrel at the same time he took the cup of wine, he is liable to pay for the barrel and the wine.

5. Even if he raises the barrel with the idea of taking only a cup of wine from the barrel, but has not taken it, he is liable for the whole barrel.

6. If a man was entrusted with a bag full of golden denari, and afterwards he takes a denari from the bag for his use, without raising the bag, and something happens to the bag afterwards, he is only liable for the one denari. If he raises the bag with the idea to take one denari, it is doubtful in the law if he is liable for the whole bag or only for the one denari (Baba Mechia 44).

7. If a man tilted a barrel of wine and take from it a cup of wine, and afterward the balance of the wine becomes sour, he is liable therefor, because on

account of the taking of the cup of wine the barrel is not full, therefore it becomes sour.

8. This law applies only in a case of wine when the barrel is not full, it becomes sour. If other drinks, *e. g.,* beer, apple cider, etc., if he tilted the barrel and take a cup of it, and afterwards it becomes sour, he is only liable for the cup.

9. If he says that he wants to use the bailment article, even if in the presence of a witness, he is not guilty.

10. If a man sends an agent to use the bailment article, he comes under the law of a robber, and is liable, even if an accident happens to the article.

11. A man gives an empty barrel in storage to his comrade, and whether a place for the barrel was appointed by the owner of it or not, afterwards the bailee moved the barrel for his own use, and broke the barrel, or before he returned it to the place where the owner appointed, or afterwards, he is liable to pay.

12. However, if he removes it from the place for the welfare of the barrel, and after if it is broken either in his hands or after he puts it in another place, he is not liable.

13. If the bailee is a banker or a storekeeper and is entrusted with a bag of money without stipulation as to whether he can use it or not, if it is not sealed

or strongly bound, even if it is bound only a little, he is permitted to use it (Baba Mechia 43).

14. Therefore, he comes under the rule of guardian for compensation, and if the money is stolen or lost, even before he uses it, he is liable to pay for it (L. c.)

15. If, however, he uses it, he is liable even for accident, even if he afterwards put it in the same place, he is liable until he returns it to the owner (L. c.)

16. If the money was sealed or strongly bound, he is not permitted to use it. Therefore, if the money was stolen or lost he is not liable.

17. If the money is entrusted to a private man, even if it is opened, he is not permitted to use it. Therefore, if it gets lost or stolen, he is not liable. If the private man is dealing in usury this law applies the same as to a banker.

18. If a man gives to his comrades in storage money or dear vessels, and thieves break in during the night, and he takes the money or the vessels and gives it to the thieves to save his fortune, if the bailee is known as a rich man, he is liable to pay for the bailment, because we understand that the thieves came on account of his fortune, and he saves his fortune with the bailment; therefore, he must pay for them. If he is not known as a rich man, then it

is the understanding that they came for the bailment; therefore, he is not liable.

19. If a man was a treasurer for some charitable organization that releases prisoners, and afterwards some robbers come and he gives it to them to save himself, if he has no other money to release himself from the robbers, he is not liable, because it is the best charity to release himself.

20. If the money was collected for the purpose of a certain prisoner, he is liable to pay.

20a. If a man gives in storage to his comrade food, such as corn, or wheat, he is not permitted to mix it with his food, and if he did not obey and mixed it with his food, he must reckon as to how many bushels there were, and also reckon as to the shortage of the pile.

21. If a man gives to his comrade food for storage, and it becomes spoiled, or wine starts to get sour, and the bailor is not in the city, he is permitted to sell the same in the presence of the Court, even if they do not become more spoiled.

22. When the bailee sells the bailment he is not allowed to buy it for himself; he can only sell it to some one else; otherwise he might be suspected of misrepresentation.

23. The money received from the sale of the bailment, the bailee is permitted to use. Therefore, if

the money is lost or stolen, even before he has used it, he must refund it, because of the benefit he received from the permit to use the money, he comes under the law of guarding with compensation (Baba Mechia 38).

24. If a man gives to his comrade a bailment for storage, Scrolls of Law or other books, it is the duty of the bailee to open the books every thirty days, to air them, at the same time he is permitted to read them, and he is not permitted to open the books for reading on his own account at any other time. If he opens and reads the books at any other time and afterwards if some accident happens to them, he is liable.

25. However, if the bailee is an educated man he is permitted to read them, because the bailor knows that some educated men like the bailee will read them and he is satisfied.

26. If a man gives for storage dresses or clothing, the bailee must shake them every 30 days.

27. This law applies only when the bailor is abroad. If the bailor is in the same land, the bailment shall not be touched without the consent of the bailor.

CHAPTER CCXCIII.

When and Where a Bailment May Be Demanded.

1. The bailment cannot be demanded except in the same place where it was entrusted.

2. However, the bailee can return the bailment to the bailor in any place he finds him; and even if the article is returned by force, the bailee is free from liability.

3. If the bailor entrust the bailment in a populated place it cannot be returned in an unpopulated place. The bailor can say to the bailee, "The bailment must be at your risk until you return it to me in a populated place."

4. However, if, at the time he entrusts to him the bailment, the bailor says, "I will go to the wilderness," and the bailee answers, "I will go to the wilderness too"; then he is permitted to return the bailment in an unpopulated place.

5. If the bailor entrust the bailment for a certain time, then the bailment cannot be returned before that time.

6. If a man entrust his bailment to his comrade and the bailor goes abroad and afterwards the bailee wants to go abroad too, he is permitted to return the bailment to the Court and he is free from liability.

7. Because we cannot force the bailee to be there

on account of the bailment, and as it is impossible for him to carry the article abroad on account of the danger, therefore, he is permitted to return the bailment to the Court and the Court will entrust them to trustworthy men.

8. If the bailee returned the bailment to the bailor through a messenger, he is responsible until the bailment comes in the hands of the bailor, because the bailor does not appoint him an agent; therefore, if the bailee wants to take in return the bailment from the agent, he is permitted to do so.

CHAPTER CCXCIV.

1. If the bailor demands the bailment from the bailee and he denies it, if he afterwards finds that he has it, and an accident happens to the bailment, he is liable to pay for it.

2. This law applies only when witnesses testify that at the time when he denied the bailment it was in his possession.

3. If, however, he is no witness of their's, he is not liable; because, maybe, the bailment is lost and the bailee says, "I will deny it, and afterwards when I find it I will admit it and then return it."

4. If he claims that the bailment was stolen or lost in his place, if it is possible to get witnesses in this place he must prove his innocence with witnesses.

5. If he fails to do so he must pay, and if it is impossible in that place to get a witness, he must take an oath to that effect, and we must impose in that oath that it did not happen by gross negligence, only he guarded it according to the law of guarding.

6. If the bailment was stolen by accident, and afterwards the thief is caught, whether he received compensation or not before he takes the oath of the guardian, he must demand the bailment from the thief; and if he caught the thief after he took the oath of the guardian if the bailee did not receive compensation, he is free from demanding it from the thief; and if he does take compensation, then he must demand the bailment from the thief.

7. A was a broker for B to loan money to C for a certain length of time, and he received his commission, and after the time expired C failed to pay; A is bound to help B in any way that he can to recover his money. The same rule applies to a marriage broker.

CHAPTER CCXCV.

When the Guardian Pays for the Bailment.

1. A man is a guardian without compensation when he says: "I will pay for the article that was stolen or lost." According to the law he can be free with an oath that so and so happened to the bailment if the bailment is such things that can be found

often in the market; *e. g.,* fruit, wool or flax, blankets or beams without decoration, etc.; then he pays and is free from any oaths (Maimonides).

2. If, however, the bailment is such a thing that cannot be found often in the market, *e. g.,* cow, or any antique that is not possible to buy for money, then the guardian can be suspected of misrepresentation; therefore, he must take an oath that the bailment is not in his possession, and afterwards he pays for the bailment.

3. The same law applies to all guardians, *e. g.,* borrower or hirer, as guardian with compensation, when the bailment is lost, and he is bound to pay. If the owner claims that the article was of value, *e. g.,* one hundred zuz, and the bailee says fifty zuz, then the bailee must say in his oath what was the value of the bailment.

4. If the bailee paid for the stolen article, and afterwards they caught the thief, and the bailment article is worth more than before, the difference in price belongs to the guardian. However, if such advances come from the body of the bailment, *e. g.,* wool grows on the sheep, or the cow has a calf, these advances belong to the bailor.

5. If the bailment is of the value of a perutha, the guardian is entitled to his oath on them, and it is not necessary to have an admission or denial to a part of the claim.

6. Some authorities say that the oath of the guardian should not be less than the value of two moea silver.

CHAPTER CCXCVI.

If the Bailor Gives the Bailment to the Bailee In the Presence of Witnesses and Afterwards the Bailee Denies or Claims That It Is Stolen or Lost.

1. If a man gives for guarding, or borrows or hires the article in the presence of witnesses, or not, it makes no difference in law whether he admits himself that it was in trust, or borrowed, or hired, and he pleads that it was stolen or lost, he is liable to take the oaths of the guardian.

2. According to this law, if a defendant makes any plea, when he might have falsely made a better one, he must be believed, because if he had desired to plead falsely he would have made the better plea. This applies to a case where he would be required to pay money, but not when he is required to take an oath.

3. Some authorities hold that the same idea of law is applied to make a defendant free from oath.

4. If, however, the bailee pleads that he was not entrusted, or that he returned the bailment, then the bailee must take a rabbinical oath and he is freed from liability.

5. Even if the bailee was entrusted, or hired, or borrowed the article and gave a receipt for it, and he pleads that he returned the article without returning the receipt for it, then he is believed if he takes a guardian oath, because the evidence of Migy if he won't tell a lie he can say that the article was stolen or lost. If he is a guardian without compensation, or accident happened to the article if a guardian with compensation, or the article is destroyed on account of work, the same if he was pleading, he must take an oath; also, he must take an oath just now.

CHAPTER CCXCVII.

If the Bailee Denied the Bailment Even the Bailor Gives Some Mark.

1. If a man gives his comrade a bailment not in the presence of a witness, he then can plead, "I did not receive anything from you"; even if the bailee is not rich enough to have such articles and the bailor places a mark upon them, he is believed, because he can say that he bought the article from another one; therefore, he is believed in his plea that he did not receive anything (Baba Bathra 45).

CHAPTER CCXCVIII.

1. If the bailment was stolen or lost and the bailee says, "I do not know how much it was worth," and

the bailor said it was worth a certain sum, if the article was lost or stolen while in his care, the bailee must pay for same; *e. g.,* he gives him in storage a bag full of money and on account of the bailee's gross negligence it was lost or stolen, and the bailor claims that there were two hundred denarii in the bag, and the bailee admitted that, "I know that there was money in the bag, but I don't know how much money," therefore, the bailee is liable to pay the amount that the bailor claims, because he is bound to take an oath, and he cannot swear because he is uncertain; therefore, he must pay for same the same amount that the bailor claims was contained therein, if there were such things which the owner of the bag possibly had (Baba Kama 62).

2. If a father died and he left to his son a bag, bound and sealed, and the son takes the bag and places it in charge of his comrade, and the bailee, because of gross negligence, loses it, and the bailor says, "I do not know what was in the bag, whether it was diamonds or a necklace," and the bailee says, "I also do not know what was in the bag, maybe only pieces of glass," then the guardian must swear that the bailment is not in his possession, and he must pay the value of glass (Rashbo).

CHAPTER CCXCIX.

1. If two bailors give a bailment to one bailee and one comes along demanding his part, he can be re-

fused till the others come. This law applies when the other is not in the same city. If he is in the same city he can take his part (Ketuboth 94).

CHAPTER CCCI.

The Law of Guardian Is Not Applied to a Case of Real Property or Charity—The Bailee Is Not Bound to Take an Oath for Same.

1. If one undertakes to guard any product standing in the field, not ready to be gathered, and afterward the product is stolen, he is not liable to pay, according to the law of Thora, but must lose his compensation, except when he can prove that he guarded according to the rule of guarding (Baba Mechia 56).

2. If a man places money in storage that has been collected for charity work or to release a prisoner, and on account of the gross negligence of the bailee it was stolen or lost, he is not liable, because there is no claimant for the money (Baba Kama 93).

3. However, if it was collected for a certain poor man or for a certain prisoner, then he is liable to pay if it is lost through gross neglect, and he must swear if he got the same according to the law of guarding (L. c.)

4. If the money or the vessel was given to the guardian for destroying, and after on account of gross negligence it was stolen or lost, he is not liable.

However, if the article or the money came to him for guarding and after a while the bailor commences to destroy the article, he is liable, except when he stipulated that he will not be liable for same (L. c.)

CHAPTER CCCII.

The Law of Guarding Is Applicable to Either a Man or Woman.

1. If the bailee or bailor is a man or woman, the same law is applied to both (Baba Kama 15).

2. If a minor places in storage, or loans to a man of age, and later if the article was stolen or lost, it is disputed by the law if the bailee is bound to take an oath for the claim of the minor (L. c.)

CHAPTER CCCIII.

The Law of Compensation Guardian.

1. The compensation guardian cannot be liable for the bailment instrusted to him unless he made some manner of settlement (mechicho) (Baba Mechia 93).

1a. If a man send the other to carry something to a certain place, and in the meantime he send him a gift, he is considered a compensation guardian.

2. R says to B, "You have the article for sale, give it to me and I will work for you for the value of same," and B says, "You can have the article for a

low price and the balance belongs to you," and R receives the article and was silent, and afterward the article was stolen or lost, R is liable.

2a. The compensation guardian is liable for gross negligence, and if the article is stolen or lost, if the article was stolen or lost by accident, he is not liable (Baba Mechia 93).

3. What is an accident? If an armed robber come to a shepherd and catch his sheep, even if the shepherd is also armed, the shepherd is not liable to pay for the sheep, because the robber is more powerful than the shepherd (L. c.)

4. If the house where the bailment is kept is burned by fire and nothing was saved, if the compensation guardian was able to save the bailment, he is liable; if he is not able to save it, he is not liable (Mordecai).

5. If the compensation guardian is sure that the bailment is burnt, then he can swear that it so happened and he is free from liability; if he is in doubt that the bailment is burnt, he is not permitted to swear that it is burnt, because, maybe, some thief came in and stole the bailment, and he is liable to pay for it; except when he can prove that the thief was armed, then he is not liable (L. c.)

6. If a wolf devoured a sheep, if it was only one wolf, the shepherd is liable to pay for it; if the sheep

was devoured by two wolves, he is not liable (Baba Mechia 93).

7. If two dogs devoured the sheep, even if they come from different directions, he is liable; if there were more than two dogs, he is not liable (L. c.)

8. If the shepherd tried to save the sheep and was not able, he must take an oath stating that he tried to save the sheep, and he is not liable (Tur).

9. If a lion, elephant, bear or snake devoured the sheep, if they come themselves, he is not liable; however, if he moved the flock to a place where armed robbers cannot harm them, he is liable (L. c.)

10. If the shepherd finds the thief and he starts to fool with him and he says to him, "We are in that place, and we have so many shepherds and so much ammunition we have no fear of you," and afterwards the robbers come and capture the sheep, he is liable (L. c.)

11. If the shepherd was able to save the sheep through another shepherd's kindness, or sticks, and he does not do so, he is liable (L. c.)

12. However, if he can receive protection with compensation, he is not liable, if he is a shepherd without compensation (L. c.)

13. If he is a shepherd with compensation, even if he has to spend the value of the sheep to save them,

he must do so. And he is entitled to surrender his cost from the owner of the sheep. And if he does not do so he is liable, under the law, of gross negligence, and he must, therefore, pay for it (L. c.)

14. If the shepherd demands a certain sum for the expense of saving the sheep, he must take an oath before he receives his claim (Ketuboth 80).

15. If the shepherd left his flock and he comes to the city, either in the time when all the shepherds come, or before the time, and a wolf comes in and devours the sheep, we must consider if he was there he could save them through other shepherds, or sticks, he is liable, and if he was there and could not save them, he is not liable (L. c.)

16. Other Sages hold that if he come in the city not in the regular time, he is liable, even if the sheep were devoured by accident (Tur).

17. If a shepherd moves the flock over a bridge, and one chases the other in the water, he is liable, because he must send each sheep over the bridge separately (L. c.)

18. If a cow dies naturally, he is not liable; if it was through his fault, *e. g.,* if he kept the cow in a very cold or hot place, he is liable (L. c.)

19. If the shepherd kept the cow in his hands, and she breaks away from him to go to the top of the

mountain, and she falls down and kills herself, he is not liable (Baba Mechia 36).

20. If the shepherd raises the cow up the mountain, or if she goes up herself, and the shepherd was able to hold her up, and he does not do so, and she falls down and breaks a leg or gets killed, he is liable by the law of gross negligence (L. c.)

21. If the shepherd raises her up to the top of the mountain and she died naturally, or if she goes out of the vault and she died there naturally, he is not liable (L. c.)

22. If, however, she was stolen, and afterwards she died while in the thief's house, he is liable (see Chapter 291; L. c.)

CHAPTER CCCIV.

1. If a man moves a barrel from one place to another, and the barrel breaks, he is not liable (Baba Mechia 82).

2. If two men remove one barrel which is too heavy for one and too light for two, and they break it, if they can prove with witnesses that it was not on account of gross negligence, then both must pay half of the value of the barrel (Maimonides).

3. In that case, if that happened in a place where it is impossible to obtain witnesses, then both must swear that it was not on account of gross negligence,

and they must pay half of the value of the barrel (L. c.)

4. If one undertakes to remove a heavy barrel which is too heavy for one, and he breaks it, he is liable to pay for the whole barrel (L. c.)

5. Some authorities say that he must pay only half of the value of the barrel (Tur).

6. If a bundle carrier is hired by a storekeeper to carry a barrel of wine, and he breaks it, in that event he is liable to pay.

7. If, on a fair day the barrel would be worth four denarii and another day three denarii, if he pays on the fair day, the bundle carrier is bound to pay four denarii, or he can return a barrel of wine; if he pays on another day, he must only pay three denarii. However, if the storekeeper has on the fair day enough wine for sale, he can pay him only three denarii (Baba Mechia 99).

8. In that event the bundle carrier can deduct from the amount the expense to make the hole in the barrel and the expenses of the retail sale of the wine.

9. Some authorities say if the loss happened on the fair day, even if he pays him on another day, he must pay four denarii, and he cannot return another barrel of wine (Tur).

10. If the loss happened on another day, even if he pay them on the fair day, he must pay them only three denarii (L. c.)

11. Compensation guardian if he was appointed for a certain length of time, and when that time has expired, if the bailment afterwards is lost or stolen, he is considered in law as guardian without compensation, and he is not liable.

CHAPTER CCCV.

1. If the guardian denies the bailment or he claims that it was lost by accident or stolen.

2. If the bailor claims of the guardian that he used the bailment and damaged it, etc., and the guardian denied it, then he must take an oath and he is not liable.

3. If the guardian pleads that the cow was lost by accident, if this happened in a place where it is possible to get witnesses, he must prove his innocence by witnesses; if he fails to do so, in such a case he is liable (Baba Mechia 83).

4. If it is impossible to get a witness in that place, he must take an oath, and include in his oath that he did not use the bailment, and that it is not in his possession, then he is not liable (L. c.)

5. If, however, he pleads that the cow was stolen or he says that it is gross negligence and he will pay

for it, he must swear that the bailment is not in his possession (L. c. 34).

6. If the cow was stolen by armed robbers, and afterwards the robbers were caught, the guardian must pay for the cow to the owner, and he can demand from the robbers that amount, even if he caught the robbers after he takes the oath of the guardian, so long as he caught the robbers, he must pay, and he must demand the amount from the robbers (Baba Kama 108).

7. If the owner of the bailment was in the employ of the bailee at the time the bailor makes a manner of settlement (mesicho), and afterwards the bailment is lost, even by gross negligence, he is not liable (see Chapter 291).

8. If the guardian make a condition to be responsible even for accident, or he makes a condition to be not liable for stolen or lost articles, or to be free from oath, the condition must be fulfilled (Baba Mechia 93).

9. If a man says to another, "You watch my article and I will watch yours at the same time," if one is lost, even by gross negligence, he is not liable. However, if he says, "You guard my article to-day, I will guard your article to-morrow," he is considered a compensation guardian, and he is liable.

10. If R says to B, "Lend me your coat, because

it is lighter; I will lend you my coat, because it is too heavy," and afterwards the light coat is stolen by R, R is entitled to have his coat (See Chap. 291).

CHAPTER CCCVI.

All Workingmen Are Considered Compensation Guardians.

1. If a man gives his coat to a tailor to repair, and it is lost or stolen, the tailor is liable (Baba Mechia 80).

2. If, afterwards when it is finished, the tailor notifies the owner to take the coat and pay for it, if afterwards it is stolen or lost, he is not liable. If, however, he says, "Pay for it and take your coat," and afterwards it is stolen or lost, he is liable (L. c.)

3. If a man gives to a carpenter a bureau or dresser to repair, and the carpenter breaks it, he must pay for it (Baba Kama 98b).

4. If he gives wood to the carpenter and he makes a bureau or bookcase, and after it is finished he breaks it, he must pay the value of the bureau or bookcase (L. c.)

5. If a man gives wool to a dyer for dyeing and he puts it in a boiler and he boils it, he must pay for the wool. However, if it is only spoiled, or he says make it black and he dyed it red, or *vice versa*, if the

benefit is more than the expense the dyer can receive only the expense; if the expense is more than the benefit the dyer can receive only the amount of the benefit (Baba Kama 100b).

6. If the owner says to the man, "Pay me for my wool or wood," that is not effective (Maimonides).

7. If the workingman says, "I will pay you for the wool or for the wood," that is not effective (L. c.)

8. If a man gives flour to a baker for making bread, and he spoils the bread, he is liable to pay for it if he receives compensation; if not, he is not liable (L. c. 99).

9. If a man gives coin to a banker for inspection, and the banker says that it is good, and afterwards it is found that it is not good, if the banker received compensation for it, he is liable to pay, even if he is an expert; if he does not receive compensation, he is not liable (Baba Kama 99).

10. If he is not an expert, he is liable, even if he has received no compensation, if he says that "I depend upon you" (L. c.)

11. If a man planted a tree for the city or he is a city clerk, and he makes a mistake, he can be discharged without being notified.

12. If a man is hired to write a book of law for another, and mistakes are found in it, and the employer

must hire a corrector to correct it; if the mistakes are ordinary ones, the writer is not liable to pay for the corrector; if they are not ordinary ones, he is liable to pay.

QUESTION OF LAW.

A gave an order to B to send him a gallon of wine for the sum of $2.00. B sends the wine. A used it up. B later sent a bill for $4.00. A claimed that he only asked for $2.00 wine. B answered: "I forgot that you said that you only wanted $2.00 wine." Is A liable for the extra sum of $2.00 or not?

Answer: A must pay two-thirds for the $2.00 claim, $1.33 1/3. (See Jewish Code of Jurisprudence, Chapter 53, Baba Kama, p. 112.)

If a man should have sickness in his family and calls in a doctor during the night for the patient, the doctor leaves a prescription which is to be filled that day. The man taking the prescription to the druggist has it filled, and after the next day he finds that he has been overcharged for same. He can claim for the overcharge (see Yora Deo, Chapter 336).

If a doctor was called in for a patient and he charged a certain large sum for his visit, there is no clai mfor overcharging, because every man is entitled to charge for his knowledge.

If a man insured the house or the life of another

man without the consent of the owner or the man in a place, that it is the rule to have the right to do so without the presence of the applicant. Afterwards the house is burned or the man dies and the owner or the heirs claim the insurance, and would like to return the expense, and the payer claims the insurance too, the insurance money belongs to the man who paid the insurance (Ndorin 36).

A bought an article of B on credit (thirty days' time), and in the meantime sells it to C for cash. At the expiration of time, A is unable to pay for the article; B cannot recover from C (Jewish Code, Chapter 117).

THE RECKONING OF MONEY IN OLDEN TIMES.

C'Cor is 2 Mono;
Mono is 60 Shekels;
Shekel is 25 Salas;
Half Sala is a Baca and a quarter of a Zuz;
Sala is 4 Zuzim;
One Zuz is 12 Pundens;
Diner is 6 Moeas;
Moea is 2 Pundens;
Punden is 2 Iserin;
Iser is 8 Perutes;
768 Perutes in a Sala.

(Baba Kama 36; Baba Bathra 7).

משנה סדר נחלות כך הוא איש כי ימות ובן אין לו והעברתם את נחלתו לבתו. בן קודם לבת. כל יוצאי ירכו של בן קודמין לבת. הבת קודמת לאחין. כל יוצאי ירכה של בת קודמין לאחין. והאחין קודמין לאחי האב. זה הכלל, כל הקודם בנחלה יוצאי ירכו קודמין והאב קודם לכל יוצאי יריכו (בבא בתרא קט"ו).

ת"ר לתת לו פי שנים פי שנים כאחד או אינו אלה פי שנים בנכסים ת"ל והי' ביום הנחילו . התורה ריבתה נחלה אצל אחין. (בבא בתרא קכ"ב).

משנה: הבכור נוטל פי שנים בנכסי האב ואינו נוטל פי שנים בנכסי האם ואינו נוטל בשבח ולא בראוי כבמוחזק. (בכורות נ"א)

משנה: האומר זה בני נאמן, זה אחי אינו נאמן, ויטול עמו בחלקו. מת יחזרו נכסיו למקומן נפלו לו נכסים ממקום אחר ירשו אחיו עמו. (בבא בתרא קל"ד).

מרי בר איסק אתא ליה אחא מבי חוזאי א"ל פלוג לי. אמר ליה לא ידענא לך. אתא לקמיה דרב חסדא, אמר ליה שפיר קאמר דכתיב ויכר יוסף את אחיו והם לא הכירוהו, מלמד שיצא בלא חתימת זקן ובא בחתימת זקן. (בבא מציעא ל"ט).

האומר איש פלוני ירשני במקום שיש בת, או בתי תירשני במקום שיש בן, לא אמר כלום, שהתנה על מה שכתוב בתורה. ר"י בן ברוקה אומר אם אמר על מי שראוי ליורשו דבריו קיימין, ועל מי שאין ראוי ליורשו אין דבריו קיימין — כולה ר"י וחסורי מיחסרא והכי קתני. (בבא בתרא ק"ל).

משנה: הכותב נכסיו לאחרים והניח את בניו, מה שעשה עשוי אלא אין רוח חכמים נוחה הימנו. רשב"ג אומר אם לא היו בניו נוהגים כשורה זכור לטוב (בבא בתרא קל"ג).

משנה ב"ש אומרים תנשא ותטול כתובה וב"ה אומרים תנשא ולא תטול כתובה. אמרו להם ב"ש התרתם ערוה חמורה לא נתיר ממון הקל? אמרו להם ב"ה מצינו שאין האחין נכנסין לנחלה על פיה. אמרו להם ב"ש והלא מספר כתובה נלמוד שהוא כותב לה שאם תנשא לאחר תטלי מה שכתוב ליכי וחזרו ב"ה להורות כדברי ב"ש. (יבמות קי"ז).

איתמר שבוי שנשבה רב אמר אין מורידין קרוב לנכסיו, שמואל אמר מורידים קרוב בששמעו בו שמת כ"ע לא פליגי דמורידין, כי פליגי בשלא שמעו בו שמת, רב אמר אין מורידין דלמא מפסיד להו, ושמואל אמר מורידין כיון דאמר מר שיימינן להו כארים לא מפסיד. (בבא מציעא ל"ט)

משנה הניח בנים גדולים וקטנים אין הגדולים מתפרנסין ע"י

הקטנים ולא הקטנים ניזונין ע"י הגדולים, אלא חולקין בשוה. נשאו הגדולים ישאו הקטנים ואם אמרו קטנים הרי אנו נושאין כדרך שנשאתם אתם אין שומעין להם, אלא מה שנתן להם אביהן נתן.

הניח בנות גדולות וקטנות אין הגדולות מתפרנסות ע"י הקטנות ולא הקטנות ניזונות ע"י הגדולות, ואם אמרו קטנות הרי אנו נשאות כדרך שנשאתן אתן אין שומעין להן, זה חומר בבנות ובבנים שהבנות ניזונות ע"י הבנים ואין ניזונות על הבנות. (בבא בתרא קל"ט).

משנה הניח בנים גדולים וקטנים השביחו גדולים את הנכסים השביחו לאמצע אם אמרו ראו מה שהניח אבא הרי אנו עושין ואוכלין השביחו לעצמן, וכן האשה שהשביחה את הנכסים השביחה לאמצע. אם אמרה ראו מה שהניח לי בעלי הרי אני עושה ואוכלת השביחה לעצמה. (בבא בתרא קמ"ג).

ואמר עולא אמר ר"א האחין שחלקו מה שעליהן שמין ומה שעל בניהן ובנותיהן אין שמין אמר רב פפא פעמים אף מה שעליהן אין שמין משכחת לה בגדול אחי דניחא להו דלשתמעון מיליה. (בבא קמא י"א).

אמר רב נחמן אמר שמואל יתומים שבאו לחלוק בנכסי אביהן ב"ד מעמידין להם אפוטרופסות ובוררים להם חלק יפה, ואם הגדילו יכולים למחות ור"נ אמר אם הגדילו אין יכולים למחות דא"כ מה כח ב"ד יפה והלכה כר"נ. (קדושין מ"ב).

משנה יתומים שסמכו אצל בע"ה או שמינה אביהן אפוטרופס חייב לעשר פירותיהן. אפוטרופס שמינוהו אבי יתומים ישבע, מינוהו ב"ד לא ישבע. אבא שאול אומר חילוף הדברים, וכן הלכה. (גיטין נ"ב).

לא יבטל אדם מפריה ורביה אלא אם כן יש לו בנים בש"א שני זכרים ובה"א זכר ונקבה שנאמר זכר ונקבה בראם (יבמות ס"א).

לעולם ישתדל אדם לישא בת ת"ח ולהשיא בתו לת"ח. לא מצא בת ת"ח ישא בת גדולי הדור, לא מצא בת גדולי הדור ישא בת ראשי רנסיות, לא מצא בת ראשי כנסיות ישא בת גבאי צדקה, לא מצא בת גבאי צדקה ישא בת מלמדי תינוקות ואל ישיא בתו לע"ה. (פסחים מ"ט).

משנה ממזרין ונתינין אסורין ואיסורן איסור עולם אחד זכרים ואחד נקבות (יבמות ע"ח).

אסור להפסיד אברי הזרע בין באדם בין בבהמה חיה ועוף אחד טמאים ואחד טהורים בין בא"י בין בחו"ל וכל המסרס לוקה מה"ת בכל מקום ואפילו מסרס אחר מסרס לוקה כיצד הרי שבא א' וכרת הגיד ובא אחר וכרת הבצים או נתקן כולם לוקין.

המשקה כום של עיקרין לאדם או לשאר בע"ח כדי לסרסו הרי זה

אסור (ת"כ פ' אמור שבת ד' קי"א).

כהן אסור מה"ת בגרושה זונה וחללה ואסור בחלוצה מדרבנן לפיכך אם עבר ונשא ספק חלוצה אין צריך להוציא, אבל גרושה אפילו אינה אלא ספק צריך להוציא. (יבמות כ"ד).

נשאת לראשון ומת לשני ומת לשלישי לא תנשא דברי רבי. רשב"ג אומר לשלישי תנשא לרביעי לא תנשא. והלכה כרבי. (יבמות ס"ד).

המגרש את אשתו ואח"כ זינתה מותרת לבעלה, אבל אם נתקדשה לאחר וגרשה או מת אסורה לחזור לראשון ((יבמות י"א, סוטה י"ח).

משנה היבמה לא תחלוץ ולא תתיבם עד שיש לה שלשה חדשים וכן כל שאר הנשים לא יתארסו ולא ינשאו עד שיהי להן שלשה חדשים אחד בתולות ואחד בעולות, אחד גרושות ואחד אלמנות אחד נשואות ואחד ארוסות ר"מ אומר הנשואות יתארסו והארוסות ינשאו חוץ מן הארוסות שביהודה מפני שלבו גם בה ר"י אומר כל הנשים יתארסו חוץ מן האלמנה מפני האבול. (יבמות מ"א).

הרי שהי' פתו אפוי וטבחו טבוח ויינו מזוג ומת אביו של חתן או אמה של כלה מכניסין את המת לחדר ואת החתן ואת הכלה לחופה ובועל בעילת מצוה ופורש ונוהג שבעת ימי המשתה ואח"כ נוהג שבעת ימי האבלות וכל אותן הימים הוא ישן בין האנשים והיא ישנה בין הנשים ואין מונעין תכשיטין מן הכלה כל שלשים יום ודוקא אביו של חתן או אמה של כלה דליכא אינש דטרח להו אבל איפכא לא. (כתובות ד').

אלו שאסורות מחמת ערוה מהן מה"ת מהן מדרבנן אותן שהן מדרבנן קדושין תופסין בהן וצריכות גט ואותן שהן מה"ת אין קדושין תופסין בהן ואינן צריכות גט. (יבמות כ')

אשת איש בכלל ערויות היא ואין קדושין תופסין בה, לפיכך אם קדשה אחר אין צריכה גט ממנו. (גיטין פ"ט)

בכסף כיצד? נותן לה בפני שנים פרוטה או שוה פרוטה ואומר לה הרי את מקודשת לי בזה (קדושין ב')

המקדש את האשה בגזל או בגנבה או בחמס קודם יאוש אינה מקודשת. (קדושין נ"ב).

מי שהלך למד"ה איתמר רב אמר פוסקין מזונות לאשת איש ושמואל אמר אין פוסקין מזונות לאשת איש. אמר שמואל מודה לי אבא בשלשה חדשים הראשונים לפי שאין אדם מניח ביתו ריקן בששמעו בו שמת כ"ע לא פליגי כ"פ בשלא שמעו בו שמת, רב אמר

פוסקין דהא משועבד לה, ושמואל אמר אין פוסקין מ"ט רב זביד אמר אימא צררי אתפסה, רב פפא אמר חיישינן שמא אמר לה צאי מעשה ידיך במזונותיך. (כתובות ק"ז ע"א)

המקדש את האשה בכסף או בשטר אינו צריך שיתן הקדושין לתוך ידה, אלא כיון שנתן לרשותה מדעתה ה"ז מקודשת. (גיטין ד' ע"ז)

אין מקדשין בפחות משוה פרוטה. (קדושין י"ב)

בשטר כיצד? כותב לה על הנייר או על החרס אע"פ שאין בו שוה פרוטה, הרי את מקודשת לי, ונותנו לה בפני עדים, הרי זה מקודשת. (קדושין ד' ט' ע"א)

בביאה כיצד? אמר לה בפני שני עדים הרי את מקודשת לי בביאה זו ונתייחד עמה בפניהם, הרי זו מקודשת, אע"ג דחוצפא היא. (קדושין ב')

ת"ר מברכין ברכת חתנים בעשרה כל שבעה. אמר רב יהודה והוא שבאו פנים חדשות, אך בשבת אין צריך פנים חדשות. (כתובות ד' ז')

משנה האיש מקדש בו ובשלוחו, האשה מתקדשת בה ובשלוחה, האיש מקדש את בתו כשהיא נערה בו ובשלוחו. (קדושין ד' מ"א)

משנה האומר לשלוחו צא וקדש לי אשה פלונית במקום פלוני, והלך וקדשה במקום אחר, אינה מקודשת. הרי היא במקום פלוני וקדשה במקום אחר, הרי זו מקודשת. וה"ה לאשה. (קדושין ד' נ')

אמר רב יהודה אמר רב, אסור לאדם לקדש את בתו כשהיא קטנה עד שתגדיל ותאמר בפלוני אני רוצה. (קדושין מ"א ע"א)

המקדש על תנאי, אם נתקיים התנאי מקודשת ואם לאו אינה מקודשת, בין שהיה התנאי מן האיש או מן האשה. (קדושין ס' ע"א)

אמר אמימר: תליוה וקדיש קדושיו קדושין. מר בר רב אשי אמר באשה ודאי לא הוי קדושין, הוא עשה שלא כהוגן לפיכך עשו עמו שלא כהוגן ואפקעינה ורבנן לקדושיה מיניה. (בבא בתרא מ"ח)

קטן שקידש או נשא אינו כלום, דלא תקינו רבנן נשואין לקטן ואסור להשיאו אשה בעודו קטן. (יבמות צ"ו, קי"ב, ע"א)

חרש וחרשת אינם בני קדושין מה"ת בין נשאו כיוצא בהן בין חרש שנשא פקחת בין חרשת שנישאת לפקח, אבל חכמים תקנו להם נשואין, לפיכך אם בא פקח וקידש אשת חרש הפקחת ה"ז מקודשת לשני קדושין גמורים ונותן גט והיא מותרת לבעלה החרש. (יבמות קי"ב ע"א)

כל מי שאינו בקי בטיב גיטין וקדושין לא יהא לו עסק עמהן, שבנקל יכול לטעות ויתיר את הערוה ויגורם להרבות ממזרים בישראל.

(קדושין ז' ע"א)

המקדש את האשה בין שחזרה היא ובין שחזר הוא או שמת היא או הוא או שגירשה, אין דמי הקדושין חוזרין, אך המתנות אשר שלחו זה לזה חוזרין, אפילו לא אכל בבית חמיו שום סעודה. ואם שלח מיני מגדים או מאכל אין צריך לשלם בעבורם אם לא כשחזרה האשה או צריכה להחזיר כל המתנות ולשלם גם בעד המאכל שני שליש בעד כל סלע. (בבא בתרא קמ"ו)

אמר רב גידל אמר רב כמה אתה נותן לבנך כך וכך וכמה אתה נותן לבתך כך וכך, עמדו וקדשו קנו, הן הן הדברים הנקנין באמירה. (כתובות ק"ב ע"א)

משנה הפוסק מעות לחתנו ופשט לו את הרגל תשב עד שתלבין את ראשה. אדמון אומר יכולה היא שתאמר אילו אני פסקתי לעצמי אשב עד שתלבין ראשי, עכשיו שאבא פסק מה אני יכולה לעשות או כנום או פטור. אמר ר' גמליאל רואה אני את דברי אדמון. (כתובות ק"ט ע"א)

משנה, הפוסק מעות לחתנו ומת חתנו, אמרו חכמים יכול הוא שיאמר לאחיך הייתי רוצה ליתן ולך אי אפשי ליתן. (כתובות ס"ו ע"א)

המשליש מעות לבתו והיא אומרת נאמן עלי בעלי ועשה שליש מה שהושלש בידו דברי ר"מ, ר"י אומר וכי אינה אלא שדה והיא רוצה למוכרה הרי היא מכורה מעכשיו בד"א בגדולה אבל בקטנה אין מעשה קטנה כלום, ופירש"י לבתו לצורך בתו לקנות שדה או נדוניא לכשתינשא. (כתובות ד' ס"ט)

רב אמי שרי לבעול בתולתא בתחילה בשבת, אמרו ליה והא לא כתיבא כתובא? אמר להו אתפוסה מטלטלי. (כתובות י"ז)

חייב אדם לזון בניו ובנותיו עד שיהיו בני שש אפילו יש להם נכסים שנפלו להם מבית אבי אמם ומשם ואליך זן אותם בתקנת חכמים עד שיגדלו. (כתובות ס"ה ע"ב)

כסותה כיצד, חייב ליתן לה בגדים הראוים לה בימות החמה ובימות הגשמים כפי השגת ידו. (כתובות י"ח, ס"ד, ע"ב)

האומר לאשתו אין רצוני שיבאו לביתי אביך ואמך, אחיך ואחיותיך, שומעין לו ותהיה היא הולכת להם כשיארע להם דבר ותלך לבית אביה פעם בחודש ובכל רגל ולא יכנסו הם לה אלא אם אירע לה דבר, כגון חולי או לידה. (כתובות ע"א ע"ב)

משנה, שלש ארצות לנשואין, יהודה ועבר הירדן והגליל אין מוציאין מעיר לעיר ומכרך לכרך, אבל באותה הארץ מוציאין מעיר לעיר ומכרך לכרך. (כתובות קי"א ע"א)

משנה, המורדת על בעלה פוחתין לה מכתובתה שבעה דינרין

בשבת ר"י אומר שבעה טרפעיקין עד מתי פוחת והולך עד כנגד כתובתה, ר"י אומר לעולם הוא פוחת והולך עד שאם תפול לה ירושה ממקום אחר גובה הימנו וכן המודר על אשתו מוסיפין על כתובתה שלשה דינרין בשבת, ר"י אומר שלשה טרפעיקין. (כתובות ס"ג ע"א)

נשבית חייב לפדותה ואינו יכול לומר לה הרי גיטך וכתובתך ופדי את עצמך, ואפילו יאמר איני פודך ולא אטול פירות אין שומעין לו אלא חייב לפדותה. (כתובות ט"ז ע"א)

האומר לאשה הרי את מקודשת לי בדינר זה על מנת שתחזירהו לי, אינה מקודשת. (קדושין ו')

משנה ד': שומרין הן ש"ח והשואל נושא שכר והשוכר ש"ח נשבע על הכל שואל משלם את הכל נושא שכר והשוכר נשבעים על השבורה והמתה ומשלמין את האבדה ואת הגניבה. (בבא מציעא צ"ג).

משנה: כל האומנין שומרי שכר וכולן שאמרו טול את שלך והבא מעות ש"ח, שמור לי ואשמור לך שומר שכר, שמור לי ואמר הנח לפני ש"ח, הלוהו על המשכון ש"ש. ר"י אומר הלוהו מעות ש"ח הלוהו פירות ש"ש.

אבא שאול אומר רשאי אדם להיות משכיר משכנו של עני להיות פוחת והולך עליו מפני שהוא כמשיב אבדה לבעלים (שם, דף פ').

משנה: הכנים פירותיו לחצר בעה"ב שלא ברשות ואכלתן בהמתו של בעה"ב פטור, ואם הכנים ברשות בעל החצר חייב. רבי אומר בכולן אינו חייב עד שיקבל עליו לשמור (ב"ק דף י"ז ע"ב).

אמר רבא הנותן דינר זהב לאשה ואמר לה הזהרי בו של כסף הוא הזיקתו משלמת של זהב דאמר לה מה הוי לך דאזקתי'. פשעה בו משלמת של כסף דאמרה ליה נטירותא דכספא קבלית נטירותא דדהבא לא קבלית עלי (ב"ק ס"ב).

ההוא גברא דאפקיד זוזי גבי חברי' א"ל הב לי זוזאי א"ל לא ידענא היכי איתבינהו אתא לקמי' דרבא אמר ליה כל לא ידענא פשיעותא היא זיל שלים (בבא מציעא א' מ"ב).

ההוא גברא דאפקיד זוזי גבי חברי' אשלמינהו לאימיה ואותבינהו בקרטליתא ואיגנב. אמר רבא היכי נדיינו דינא להאי דינא נימא לדידי' זיל שליים אמר כל המפקיד על דעת אשתו ובניו הוא מפקיד נימא ליה לאימיה זיל שלים. אמרה לא אמר לי דלאו דידי' נינהו דאקברינהו נימא ליה אמאי לא אמרת לה אמר כ"ש דכי אמרן לה דידי הוא טפי מזדהרא בהו אלא אמר רבא משתבע איהו דהנהו זוזי אשלמינהו לאימיה ומשתבע אימיה דהנהו זוזי איתבתיה בקרטליתא ואיגנב ופטור (בבא מציע נ"ב).

רבא אמר נושא אדם כמה נשים על אשתו והוא דאפשר למיזייניהו (יבמות ס"ה ע"א).

CHAPTER CCC.

When Two Persons Deposit Money With a Bailee, One the Sum of One Hundred Dollars and the Other Two.

1. If one man deposits $100 and another at the same time deposits $200 in two separate bags, with the same bailee, and the latter is uncertain as to who deposited the larger sum, he is bound to refund $200 to each one who will take an oath that he deposited that sum, even if he will thereby lose $100, since he was negligent and did not keep a careful record of the two funds (Baba Mechia 37).

2. If, however, they put the two sums in one bag, and each one claimed the $200, the bailee must give to each $100, and the balance of $100 left with him until they admitted each to the other, or he bring evidence to prove to whom the $100 belongs to, because he can say, "I see that you trust each other, therefore I kept no record."

3. If two men place in storage two vessels, one worth $100 and the other worth $200, the same rule applies.

4. If two men give to a shepherd each one cow, and one cow dies, and it is uncertain to which bailor the dead one belonged, even if they were bound together, and each claimed the live cow belonged to him, they must both take an oath, and receive pay from the shepherd.

אבן העזר

JEWISH CODE OF JURISPRUDENCE

TALMUDICAL LAW DECISIONS

MARRIAGE, DIVORCE, DOMESTIC RELATIONS
LAW QUESTIONS

By RABBI J. L. KADUSHIN
AUTHOR OF THE JEWISH CODE

PART I - II AND BRITH ITZHAK

אורים ותומים

PART IV

BOSTON
THE TALMUD SOCIETY
1921

INTRODUCTION TO THE LAW OF MARRIAGE.

Blessed His the name of the Holy One who gives us the command of marriage and forbids us of the prohibited marriage and adultery (Comment 7).

The Holy Talmud relates (Ketuboth 103) that the Holy Rabbi, before his death, called to his presence his sons and made a verbal will with four principal directions: "Take care of the honor of the mother," "Let the candle burn on my place," "Let my bed be spread," and "Let the table be set." By the first he meant to impress his sons with the importance and necessity of treating the mother with greater respect after his death than before, as before the honor was divided between the father and mother, and after death, there being no division, all the honor belongs to the mother. A mother is the best friend in the world, and what she commands is holy and who obeys the mother's word is guarded from all danger and misfortune. If a man honors his parents he may live long (Commandment 5).

The candle is the symbol of education. If a man is educated he has light in his eyes, and if he is ignorant he gropes in the dark and knows not whither he goes, and, therefore, has commanded his children to take care of their learning. More education in the world means less iniquity, and when the learning will be multiplied, then the blessing of peace will come. Spend billions on education, not one cent on ammunition. Money spent on education prevents disease. An ounce of prevention is worth a pound of cure.

Let the table be set signifies charity. The table should always be set for the hungry that they may be appeased of their hunger as he himself did the same (see B. B. 9).

Let the bed be spread signifies the purity of the home and domestic relation. The home should be the place of truth, virtue and love; and keep away from other women, because the children that come from prohibited cohabitation are defective mentally, morally and physically. Some of them develop into the most dangerous criminals. Such children are a menace and a stain to the community. A man should be happy with and proud of his wife; should honor her and advise with her (B. K. 99). He should not covet other women (Commandment 8). A wedlock based on such morals will produce healthy, honorable and good children, and happiness and wealth to the home.

I, therefore, find it my duty to publish this edition as the law of marriage and domestic relations.

Under what circumstances a divorce can be legal or not and the respective right of the husband and wife, and some other usable questions of law which will be of great interest to the reader, and I pray, O Lord, "guard me from mistakes and misfortunes." I sincerely pray that the near future will find this a better world in which peace and happiness will prevail. Amen.

The Editor.

CHAPTER I.

The Law of Propagation.

Blessed be the name of the Holy One, who is desirous of promoting the welfare of His creatures, and who in His divine wisdom saw that, "It was not good for a man to be alone" (Gen. II, 18). He therefore commanded: "A man shall leave his father and mother, and cleave unto his wife, and they shall become one flesh" (L. c. 24).

1. It is the duty of every man to marry in order to propagate the human race. The man who fails to marry is likened to the one who sheds innocent blood. When a man marries all his sins are forgiven (Yebamoth 62b, 63b and 64a).

2. If a man is poor and possesses no means of meeting all marriage expenditures, he is even permitted to sell the Scroll of the Law in order to be able to marry (Megilah 27a).

3a. It is the duty of every male to marry upon attaining the age of eighteen years (Abboth V).

3b. And it is even preferable that he marry before attaining such age (Sanhedrin 76b).

3c. Under no circumstances shall a man remain unmarried at the age of twenty years (Kidushin 29b).

4. When a son and a daughter are born to a man,

it is then deemed in the eyes of the law that he has complied with the duty of propagation; provided, however, that such son is not impotent and that such daughter is not incapable of conception (Yebamoth 62a).

5. If a son and a daughter are born to a man and both of them die during his lifetime, leaving issue consisting of at least one son and one daughter, it is considered in the eyes of the law that he has complied with the law of propagation. If, however, only one of such children has left male and female issue, and the other has left no issue at all, the duty of propagating the human race has not been complied with (L. c. 62b).

6a. If the wife of a man dies, he is bound to marry again, although he has complied with the duty of propagating the human race. In such an event, if he possesses the means of supporting a wife and children, he must marry a woman capable of conception. If he possesses no such means, and issue was left to him by his former wife, he is not bound to sell the Five Scrolls of the Law in order to enable him to marry a woman capable of conception (L. c. 61b).

6b. Some authorities, however, hold that even when a man has issue of his prior marriage, he is bound to sell the Five Scrolls in order to marry a woman capable of conception (Rabenu Asher).

7. In the foregoing event, if the man is aware

that he is impotent, or if he fears that quarrels may arise between the children of his first wife and those of his second wife, he is permitted to marry a woman incapable of conception (Nimuke Joseph).

8a. The law permits a man to marry several women in succession, provided he is able to support them. He must likewise obtain the consent of his first wife thereto (Yebamoth 65a).

8b. Rabenu Gershon (born in Metz, 960, and died 1040) put a ban upon the man who weds more than one wife. This enactment was intended to apply to certain particular lands only, and, therefore, took no effect in all countries. However, in the countries where polygamy is prohibited by law, it is the duty of every man to abide by such law, although the aforesaid ban took no effect there; and if any person marries two wives, he is forced to divorce one of them (Nimuke Joseph).

9. If a man, without the consent of his wife, marries a second wife, he has committed a fraud thereby upon his first wife, and she may, therefore, force him to give her a bill of divorce (L. c.)

10. If a man claims that his wife has become insane, he must prove such contention before one hundred learned men who are competent to be judges; and he must likewise deposit the bill of divorce and the amount mentioned in the contract of marriage with a trustworthy person, and then he is permitted

to marry another woman (R. Moses Iserlish, commonly known as the Rama).

11. When a woman is converted, it is disputed if the husband needs to deposit a bill of divorce for her or he can wed without them.

CHAPTER II.

The Duty of a Man to Marry a Reputable Woman.

1. A man is prohibited from marrying a woman forbidden to him by law, such as a doubtful bastard and the like. He who marries a woman forbidden to him because of pecuniary gain, will have disreputable children. Relatives may interfere with any member of the family who is about to marry a woman forbidden to him (Kidushin 70a).

2. If a man is promised a certain sum of money as his dowry, and such promise is not complied with, he shall not reject his bride-to-be on that account; neither shall he cause any quarrel because of that, but he shall accept whatever is given him with good grace and respect, and the Lord will, therefore, be with him and make him prosperous (Tur).

3. It is the duty of every man to make an endeavor to marry the daughter of a learned man. If he is unable to secure a learned man's daughter, he shall make an effort to marry the daughter of a man who is at the head of a synagogue; or of the one at

the head of some charitable institution; or of a teacher; but by no means shall he marry the daughter of an ignorant person (Pesahim 49b).

4. It is the command of a man to marry his sister's daughter; and there is an opinion that the same rule of law applies to a brother's daughter as well (Sanhedrin 76).

5. A man is prohibited from marrying a woman of a family, three members of which are either lepers or epileptics (Yebamoth 64b).

6. A young man is forbidden to marry an elderly woman, and, *vice versa,* an elderly man is forbidden to marry a young woman, because it is result adultery (L. c. 106b).

7. A man is prohibited from marrying a woman with the intention of divorcing her after the expiration of a certain length of time. If, however, at the time of the marriage he expressly stated to the woman that he marries her with the intention of divorcing her after the expiration of a certain time, it is permissible. Referring to olden time when it was permitted to divorce a woman by force (L. c.)

CHAPTER IV.

The Law of Bastardy.

One born from prohibited cohabitation shall not enter in the congregation of the Lord; even the tenth

generation of him shall not enter in the congregation of the Lord (Deuteronomy xxiii, 3).

1. Neither bastards nor their descendants are permitted to intermarry with Israelites. As to what constitutes a bastard (*Vide* Chapter xv, *supra*).

2. The descendants of either a male or a female bastard are in law considered as bastards (Kiddushin 66).

3. A foundling is suspected of being a bastard, if there is evidence by which it can be proven that it was abandoned by its parents so that it might die. If, however, there is evidence to the effect that it was not cast out by its parents so that it might die, *e. g.*, when it is either circumcised, powdered, or otherwise taken care of, or when it is discovered at the entrance of a synagogue, it is then not considered a bastard, because it is then evident that it was left there because its parents were unable to provide for it (L. c. 73b).

4. If before the foundling is removed from the place where it has been left, a man comes and claims that it is his child and that he has cast it out there, his claim is accepted as true without any corroboration. If, however, after the foundling has been removed from the place it had been left and thereafter either one of its parents claim it, such claim is not accepted as true without corroboration (L. c.)

5. In a time of famine the claim made by either of its parents is accepted as true, even after it has been taken indoors; because there is a presumption that its parents disposed of it so that it might be fed by others, not that they desired to.

6. If an unmarried man has cohabitation with an unmarried woman and she gives birth to a child, if it is definitely proven by his admission or otherwise that she becomes pregnant only of him, this child is legitimate (Ketuboth 13).

CHAPTER V.

Destroying the Power of Reproduction.

1. It is prohibited by law to destroy the powers of reproduction of a male, whether of man, beast or fowl; whether clean or unclean; and the one who commits this crime is liable to the punishment of flagellation. It is likewise prohibited to destroy the power of reproduction of a female (Toroth Kohanim vii).

2. It is also prohibited to destroy the power of a male to reproduce by making him drink any kind of medicine. It may, however, be given to a female if child bearing will endanger her life, and this must be done with the permission of her husband.

CHAPTER VI.

Law Concerning Priests.

1. A cohen (priest born of the generation of Aharan, High Priest) is forbidden to marry a harlot or a divorcee. He is even prohibited from re-marrying his own wife after he has divorced her, but he is permitted to marry a widow.

2. If a priest violates the aforesaid law and marries a divorced woman, he is bound to divorce her, because upon marrying, he declared that he married her according to the law of Moses and Israel, and the law prohibits such marriage.

3. In the aforesaid event he may be compelled to divorce her under the penalty of being denied the priestly bounties and heritage. If he fails to do this, he loses his priestly rite.

4. He is likewise prohibited from marrying a woman who has committed adultery even under duress (Niddah 52b).

5. Even if his own wife has committed adultery under duress, he is bound to divorce her.

6. If a woman was once a divorcee she is not permitted to marry a priest (cohen) after the death of her second husband.

7. If the wife of an Israelite (not a descendant of Aaron is forced to commit adultery, she is for-

bidden to marry a priest even after the death of her husband.

8. A cohen (priest) is prohibited to dwell with his divorced wife under the same roof. If the house wherein they dwell is joint property, his divorced wife is bound to leave him in possession, but if the house is hers, he must leave her in possession.

9. If his divorced wife is indebted to him, he is not allowed to go and collect such debt from her in person, but must send another to collect the same.

CHAPTER IX.

1. If a woman marries a man and he dies and she subsequently marries another man and he dies likewise, she is not permitted to marry a third. If, however, she does marry a third man, he cannot divorce her on that account, but she is not then entitled to the amount mentioned in the contract of marriage which is prescribed by law in case of divorce or death (Yebamoth 64b).

2. If the husband, at the time of marriage, was aware of the fact that her two prior husbands died, he is bound to pay her the amount mentioned in the contract of marriage (Rabenu Asher).

3. If one of her former husbands did not die a natural death, when he was either murdered or died in some other manner, she is permitted to marry a third (Rabbi Moses Iserlish).

4. A man whose first and second wives have died, even when they died natural deaths, is permitted to marry a third, and so forth (Rabenu Asher).

CHAPTER X.

If a man divorces his wife and she re-marries, then, if her second husband either dies or divorces her, she is not permitted to re-marry her first husband, even in the event such death or divorce took place immediately following the ceremony of her second marriage.

CHAPTER XIII.

1. A woman that is divorced or becomes a widow must wait at least ninety days before she may re-marry (the day of her husband's death or of her divorce excluded). She must wait ninety days, even if her husband's death or the divorce took place immediately following the ceremony of marriage. This period was provided for by the learned in order to ascertain whose child the woman might bear (Yebamoth 41-43a).

2. It was ordained by the Sages that she must wait ninety days, even if there be no probability of her being pregnant; as when she is known to be incapable of conception, or if she is too old to bear children, or in case her husband was away in a distant land, or he was at that time confined in prison,

or even if immediately after the divorce or death of her husband she gave birth to a dead child.

2a. Even after prohibited sexual intercourse with another man, by force, she must wait ninety days, or until she be clean to her husband (Yebamoth 42b).

3. However, a man is permitted to re-marry his wife after he has divorced her without having to wait the ninety days mentioned above (Yebamoth 43a).

4. A man is not permitted to marry or even betroth a woman when pregnant from her prior husband. In such event she must wait until the child is born and thereafter she cannot re-marry until the child is twenty-four months old (L. c. 42a).

5. It is prohibited to marry a woman who has a suckling child before the child attains the age of twenty-four months, even if the child is attended by a nurse or it is weaned in the meantime (the day of the child's birth and the day of the marriage being excluded) (Yebamoth 42b).

6. If, however, the child has died, or if it was weaned prior to her husband's death or to her divorce, or if she gave the child a nurse three months before her husband's death or divorce, she has then to wait only ninety days before she can re-marry (L. c.)

7. A widow or divorcee may demand compensa-

tion for nursing the child, and she may demand payment of the amount mentioned in the contract of marriage, immediately upon the death of her husband, although she is unable to marry before the expiration of twenty-four months (L. c.)

CHAPTER XIV.

The Law of Engagement or Marriage During Mourning.

1. It is forbidden to become engaged or to marry within the thirty days of mourning.

2. If a man have small children to be guarded, then he is permitted to re-marry, even within seven days, but he is not permitted to cohabit with her until after thirty days.

3. If he has no children and does not fulfill the law of propagation, he is not permitted to re-marry within seven days, but after the seven days he is permitted to re-marry, even if he is in mourning for his father or mother.

4. And after thirty days it is permitted to everyone to re-marry, even if he fulfills the law of propagation, and he has no small children, and he is in mourning for his father or mother.

5. If a man promises to marry a certain woman at a certain time, and before the time expires the woman loses her father or mother, if he does not ful-

fill the law of propagation, he is permitted to marry the woman during the thirty days of mourning.

6. If a man has prepared all the articles for his wedding supper—baked his bread, slaughtered his cattle and mixed his wine with water—and before the wedding ceremony takes place his father dies, and it is impossible either to keep the articles in storage or to sell them; or if the mother of the bride dies after she makes ready all the articles that belong to the ornaments, and it is impossible to keep them until the seven days of mourning are over, because they would spoil, and there is no one to prepare other things, then it is permitted to take the deceased into another room, and the wedding ceremony may proceed.

7. The bridegroom is permitted to attend the first cohabitation with his wife, but not more, though he has a seven-day holiday, and at the end of that seven days he is obliged to keep the seven mourning days (Ketuboth 3).

8. However, if it is the mother of the bridegroom or the father of the bride, or any other relative, who has died after the wedding articles are prepared, and these articles cannot be sold or kept, he must first attend the burial of the deceased and observe the seven days of mourning before the wedding ceremony can take place.

9. If a relative of the bride or bridegroom dies during the seven days of benediction, he must begin

the mourning period after the seven days. Everything that is happy is permitted him in those days except cohabitation, which is forbidden (M. K. 23).

CHAPTER XV.

Prohibited Marriage Because of Consanguinity.

1. There are some relations that are forbidden by the Law of Moses, and there are some relations that are forbidden by rabbinical enactment. If a man marries a woman forbidden by the Law of Moses, the marriage is void *ipso facto* and no divorce is necessary to dissolve the bonds of such matrimony. If a man marries a woman forbidden by rabbinical ordinance, the marriage is not void *ipso facto* and a divorce is necessary to dissolve the same.

2. A mother is forbidden by the Law of Moses, but a mother's mother, etc., is forbidden by rabbinical enactment (Yebamoth 21a).

3. The mother of a man's mother's father is forbidden by rabbinical ordinance (L. c.)

4. The mother of a man's father, etc., is forbidden by rabbinical enactment (L. c.)

5. The mother of a man's father's father is forbidden by rabbinical ordinance (L. c.)

6a. The Mossaic Law forbids a man to marry his father's (second) wife, either after his father has divorced her or after he has died (Sanhedrin 53a).

6b. He is, however, permitted to marry such wife's mother (Rabbi Moses Iserlish).

7. The wife of a man's father's father is forbidden by rabbinical enactment (Yebamoth 21a).

8. The wife of a man's mother's father is likewise forbidden by rabbinical ordinance (L. c.)

9. The wife of a man's father's mother's father is forbidden by rabbinical ordinance (Rabbi Moses Iserlish).

10. The Law of Moses forbids the wife of a man's father's brother, when he is a brother of one father, but the wife of a man's father's brother, when he is a brother of only one mother, is forbidden by rabbinical enactment (Yebamoth 21a).

11. The wife of a man's mother's brother, whether he is a brother of only one father or of only one mother, is forbidden by rabbinical ordinance (L. c.)

12. A sister is forbidden by the Mossaic Law, whether she is a sister of only one father, or of only one mother, or an illegitimate sister (Yebamoth 23a).

13. One is permitted to marry the daughter of his father's wife whom she had borne by another husband (Yebamoth 21a).

14. By the Law of Moses, it is forbidden to marry

a daughter, a daughter's daughter, or a son's daughter.

15. By rabbinical enactment, it is prohibited to marry the daughter of a son's daughter, or the daughter of a daughter's daughter, or the daughter of a son's son, or the daughter of a daughter's son (Yebamoth 22b).

16. A wife's daughter, or her daughter's daughter, or her son's daughter is prohibited by the Law of Moses.

17. The daughter of a man's wife's daughter's daughter, or the daughter of wife's son's son, etc., is forbidden by rabbinical enactment (Yebamoth 22a).

18. The wife's mother, or her mother's mother, or the mother of wife's father is forbidden by the Mosaic Law.

19. The mother of a wife's mother's mother, or the mother of a wife's father's mother, or the mother of a wife's father's father is forbidden by the rabbinical law (L. c.)

20. The father's sister or the mother's sister, whether she is a sister of only one father or of only one mother, is prohibited by the Mosaic Law (Yebamoth 54a).

21. It is permitted to marry the daughter of the father's brother or of the mother's brother (Yerushalmi, Yebamoth).

22. It is permitted to marry the wife or the daughter of either the brother's son or of the sister's son (L. c.)

23. The wife of the father's brother, when he is a brother of one father, is prohibited by the Mosaic Law (Yebamoth 23b).

24. The wife of the father's brother, when he is a brother of only one mother, or the wife of the mother's brother, whether he is a brother of only one father or of only one mother, is prohibited by rabbinical enactment (Yebamoth 23b).

25. The Law of Moses forbids the marriage of a son's wife (L. c.)

26. The wife of a son's son, etc., is forbidden by rabbinical ordinance (L. c. 21b).

27. The wife of the daughter's son is forbidden by rabbinical enactment (L. c.)

28. A man is permitted to marry the wife of his wife's son (L. c. 21a).

29. A stepson is permitted to marry his stepfather's wife (not his mother, of course) (L. c.)

30. By the Law of Moses, it is forbidden to marry the wife of a brother, whether he is a brother of only one father, or of only one mother, or he is an illegitimate brother (L. c.)

31. It is disputed whether a son-in-law is permitted to marry the second wife of his father-in-law, or whether a father-in-law is permitted to marry the second wife of his son-in-law (L. c. 23b).

32. It is permitted to marry the wife of a brother's son or the wife of a sister's son (see Chap. 2, Sanhedrin 76).

33. It is forever prohibited to marry a woman once wed to a relative, by which marriage she becomes either by the Law of Moses or by rabbinical enactment, even if, subsequent to such marriage, she married into another family and was then divorced or widowed (Maimonides).

34. It is forbidden by the Mosaic Law to marry the wife's sister, whether she is a sister of only one father or only one mother, while the wife is alive, even after she is divorced; but is permitted to marry the wife's sister if the wife died (Yebamoth 57a).

35. If witnesses come and testify to the effect that the wife of a certain man who went abroad has died, and the husband marries her sister, and then it is proven that his wife is alive, it is not essential in such a case that a bill of divorce be given to the sister in order to dissolve the bonds of matrimony, and the husband is permitted to live with his first wife. The husband is permitted to marry the relatives of the sister, and the sister is permitted to marry

his relatives. If the wife dies, he may marry the sister (Gittin 95a).

36. It is an established rule of law that if one marries any of the forbidden relatives, being under the impression for some reason or other that he is permitted to do so, no bill of divorce is required to dissolve the bonds of matrimony, because no betrothal takes effect in the case of forbidden relatives (*Vide* Sect., *supra*).

37. In case a man commits an adulterous act with any of his wife's relatives whom he is forbidden to marry, his wife does not thereby become forbidden to him, and he may marry any of the relatives of the woman with whom he had such intercourse. If, however, the woman with whom he has committed such adulterous act is accustomed to visit his house because of her relationship to his wife, he is bound to divorce his wife (Rabbi Moses Iserlish).

38. A man's wife and her sister's husband went abroad, and the man heard that both of them have died there. Thereafter the man married his wife's sister and then his wife and his brother-in-law returned from abroad. In such a case, his sister-in-law must obtain a bill of divorce from him and she is not permitted to cohabit with her husband, while his own wife is likewise forbidden to him (Yebamoth 95b).

39. If a man learns that his wife has died and

he marries her sister, and thereupon it is proven that at the time he married her sister she was alive, but that she died thereafter, then the children born to him by his wife's sister while his wife was alive are considered bastards, but the children born after her death are legitimate (Gittin 94a).

40. If a man betroths a woman, and the betrothal for one reason or another becomes void, he is permitted to marry any of the relatives of the woman whom he has betrothed (L. c.)

41. The above rule of law, however, holds good only when the betrothal became void *ipso facto,* but if it were dissolved by a bill of divorce, he is not permitted to marry any of her relatives (Rabbi Moses Iserlish).

CHAPTER XVII.

When a Married Woman Is Permitted to Re-Marry.

1. A married woman is included among the forbidden connections, and if she is betrothed, the betrothal has no effect. Therefore, if a man marry a woman who is not legally divorced according to the Mosaic Law, even if she is divorced legally according to other law, the marriage is void.

1a. A marriage contract when entered into by the parties is made in accordance with the Law of Moses

and Israel. The groom expressly states to his bride-to-be: "Thou art betrothed to me in accordance with the law of Moses and Israel." Consequently the dissolution of such marriage cannot become effective unless the contract is dissolved in accordance with that law. A contract may be rescinded only by the same parties and under the same conditions under which it was made.

2. A married woman is permitted to remarry if her husband went beyond the seas and it was proven that he died there.

3. The testimony of one witness, or of a slave, or of a woman, or of a relative, is sufficient to establish the fact that the husband of a woman has died, and thereby gives her permission to remarry (Mishnah, Yebamoth).

4. Hearsay evidence is admissible in a case where the right of married women to remarry is involved (L. c.)

5. Witnesses disqualified from testifying by the Law of Moses are incompetent to testify in the above instance; but witnesses disqualified from testifying by rabbinical enactment are competent to testify (Yebamoth 25a).

6. The following five women are disqualified from testifying to the death of a woman's husband: Her mother-in-law, her mother-in-law's daughter, her

husband's wife (referring to the time when polygamy was permitted), the wife of her husband's brother, and her husband's daughter (who was born to him by another wife), because it is presumed that they hate one another, and that such relatives intentionally testify thus in order that she might remarry and thereby forbid her from living with her husband (Yebamoth 117).

7. When hearsay evidence is introduced to testify to the death of a woman's husband, it is not essential for the witness introducing such evidence to specifically mention the person or persons from whom he has heard it. It suffices if he simply states that he has heard a statement made to that effect (Rabbi Moses Iserlish).

8. If a witness testifies to the effect that he has seen the man dying, he must be examined and questioned as to how and under what circumstances he has seen him dying. If the testimony of the witness establishes the fact beyond any doubt that the man has actually died, the wife is permitted to re-marry, but if the witness simply testifies that he saw the man in a condition in which people ordinarily die, the wife is not permitted to re-marry (L. c.)

9. If a man comes and testifies that he himself has killed a certain person, although his testimony cannot be accepted in its entirety, for a man cannot testify against himself in criminal cases (*Vide* Jew-

ish Code of Jurisprudence, page 32, par. 135), that part of the testimony relating to the death of the man is admitted, and his wife is permitted to re-marry (Yebamoth 25a).

10. If one witness comes to a woman and tells her that her husband has died, it is not necessary that she appear before a court of law to testify to that effect in order that she may remarry. She may appear before any court of law and declare that her husband has died, and such declaration will be accepted as true. If, however, the witness in whose name she has made the declaration denies it and says that her husband has not died, her declaration is not accepted as true (Ran).

11. If one witness testifies that a certain man has died a natural death, and another witness testifies that the man was killed, although the witnesses disagree as to the manner in which the man died, but both agree to the fact that he is not alive, his wife is permitted to re-marry (Yebamoth 117b).

12. If it is mentioned in a government document that such and such a man has died or has been killed, his wife is permitted to re-marry (Yerushalmi, Yebamoth).

13a. The rule of law that one witness may testify as to what he has heard from another witness regarding the death of a certain man, holds good only

when such other witness is a rational (sensible) person (Yebamoth 121).

13b. But if he has heard it said by an insane person or by a minor, such hearsay evidence is not admissible (L. c.)

13c. However, if a man heard of minors said just now are come from the funeral of such and such a man, and some speakers make some eulogy and there and there educated men was gone behind the dead carriage and he was burial of them or them cemetery. With them evidence, the hearer can notify the wife of them deceased and she can be permitted to re-marry. This law applies only if he is notified at the same time of the hearer, not afterwards.

14. If people find a man either slain or dead and the forehead, nose and features of the face are not mutilated and they recognize him to be such and such a person, they may testify that such person is dead. If any one of the aforesaid parts of the dead man's body is mutilated, although his clothes bear special and distinct marks by which they could be identified as belonging to that particular man, and thereby recognize him, they cannot testify to the effect that such and such a man is dead, because it is probable that the man whom they have known to have such clothes has lent them to somebody else (Yebamoth 120a).

15a. Even if there was an ordinary mark on the

body of the dead man, such as a hair mole, the witnesses cannot testify to the death of such person (L. c.)

15b. If, however, there was on his body an extraordinary mark of identification, they may testify to his death. A superfluous limb, or a limb less than the ordinary number, constitute an extraordinary mark of identification; but a limb too long or a limb too short, or white hair or red hair does not constitute an extraordinary mark of identification (Rabbi Moses Iserlish).

16. No testimony concerning the identity of a dead man is admissible unless it is proven that he was found by the witnesses not more than three days subsequent to his death or to his having been murdered. If he was found by the witnesses after the expiration of three days, no testimony concerning his identity is admissible, because the features of a man's face become changed three days after his death (Mishnah, Yebamoth).

17. The above rule of law has application only to a case where the dead person is found on dry land; but if he is found by the seashore, even if he is found there many days after he has been drowned, evidence concerning the identity of such man is admissible, because the body of a man becomes mutilated in water after the expiration of a very long time (Yebamoth 121a).

18. This, however, is true only when he was found there immediately after he was cast up by the sea, and also when the dead body was not bruised. If a long time has expired from the time he has been cast up by the sea to the time he was found, or if the body was bruised, no testimony may be admitted concerning the identity of the dead man, because on account of the bruise the body becomes swollen and consequently changed by reason thereof (L. c.)

19. If witnesses saw a man fall into a den of lions, tigers, or the like, they cannot testify to the effect that he has died, because there is a probability that the animals were not hungry at that time and therefore did not devour him. If, however, they saw him fall into an excavation where serpents were found, they may testify to the effect that he has died (Yebamoth 120a).

20. If the witnesses saw a man fall into a fiery furnace, or into a caldron full of boiling wine, oil or water, or if they saw his throat cut, although they saw him rise and flee thereafter, they may testify that he died, because he is bound to die ultimately therefrom (Yebamoth 120b, 121b).

21. If the witnesses saw him fall into the ocean, they cannot testify that he has been drowned, because it is probable that he got out at some other part of the ocean where they could not see him. If, however, they saw him fall into a collection of water the

entire surface of which could be seen by a man, and they have waited near the water so long that a man was bound to die within such a period of time, they may testify concerning his death and his wife may remarry (Yebamoth 121a).

22a. A woman herself may testify concerning the death of her husband, and she is permitted by reason of her testimony to remarry (Yebamoth 114b).

22b. In such event, she is likewise entitled to the sum of money that has been provided for her in her marriage contract, in case of widowhood or divorce, as provided for by the Law of Moses (Yebamoth 116b).

23. The last-named rule of law is true only in a case where she comes to court and says: "My husband has died, give me permission to remarry," and she makes no mention of the money she is entitled to get in such event. If, however, she says: "My husband has died, give me the money I am entitled to receive," she is not permitted to remarry, nor is she entitled to the money, for, it is presumed, that she is simply desirous of receiving her money during the lifetime of her husband, but she has no intention to remarry, as she is aware that her husband is alive (L. c.)

CHAPTER XXVII.

Laws Concerning Betrothal.

1. If a man betroths a woman while giving her something of pecuniary value in consideration therefor, he must give her something valued at a perutha or more, and he must say to her in the presence of two witnesses: "Thou art betrothed unto me therewith the peruto" (the smallest coin then in circulation in the land, *e. g.,* a cent in U. S.), (Kidushin 2a).

2. It is preferable, and it is customary, to say: "Thou art betrothed (consecrated) to me, in accordance with the Law of Moses and Israel" (Rabbi Moses Iserlish).

3. It is likewise customary to betroth a woman with a ring (L. c.)

4. If a woman gives money to a man and says to him: "I am betrothed to thee therefor," she does not become betrothed thereby (Kidushin 5b).

5. If a woman gives a certain coin to a man and says to him: "Take this coin from me as a gift and I will be betrothed to thee." The man takes the coin and replies: "Thou art betrothed to me for the honor thou has derived by my accepting a gift from thee." If he is a prominent person, she is betrothed thereby because she was honored by his having accepted a gift from her, but if he is an ordinary person she does not become betrothed thereby (L. c.)

CHAPTER XXVIII.

Betrothing a Woman With a Stolen Article, Etc.

1a. If a man betroths a woman by giving her an article of value which was stolen by him or of which he otherwise illegally obtained possession, she does not become betrothed thereby (Kidushin 52a).

1b. If, however, it is known that the owner of such article has despaired of ever regaining it, and has as a result renounced his right of ownership thereto, and it is thus known that the one who betroths the woman has acquired title to the article with which he betroths, she becomes betrothed thereby (Kidushin 52b).

2. If a man illegally obtains possession of an article belonging to a woman, and upon returning such article to her he says: "Thou art betrothed unto me therewith," if the two concerned have never before spoken about betrothal, she is not betrothed thereby (L. c.)

3. If, however, before the aforesaid betrothal took place, the man and the woman had spoken about being betrothed, and she accepted her article from him in silence, she becomes betrothed thereby (L. c.)

4. If there have been no betrothal negotiations between the man and the woman, and when he returns the article to her and says: "Thou art be-

trothed unto me," she replies, "Yes," she becomes betrothed thereby (L. c.)

5a. If after she has already received the article from him, he says to her: "Thou art betrothed unto me therewith," she does not become betrothed thereby, even in the event she replies, "Yes," even when there were betrothal negotiations between them prior thereto (L. c.)

5b. Even if she claims that she has received the article from him originally with the intention of becoming betrothed, her words are of no effect (Rabbi Moses Iserlish).

6. The foregoing rules of law apply also to a case where a man has borrowed a certain sum of money from a woman, and when he repays her the loan he says to her: "Take the money that I owe thee, and thou art betrothed unto me therewith" (Kidushin 13).

7. If a woman owes to a man a certain sum of money, and the man says to her: "Thou art betrothed unto me with the money thou owest to me," she does not become betrothed thereby. It is immaterial whether he holds a promissory note from her or not. This rule of law holds good even in a case where the money she has borrowed from him is still in her possession, she having made no use thereof or in the event the betrothal took place at the time the loan became due (Kidushin 6a, *et seq.*)

8. The above rule of law applies likewise to a case where the woman is indebted to the man for services rendered by him on her behalf (L. c.)

9. If a man, upon making a loan to a woman, says to her: "Thou art betrothed unto me in consideration of my extending the time within which it shall be paid, and I will make no demand upon thee till then," the betrothal is valid. Nevertheless, it is forbidden to do so, because it appears like receiving usury for a loan, which is prohibited by the law of Thora (Kidushin 6b).

10. If a woman owes money to a man, and he says to her: "Thou art betrothed unto me in consideration of my releasing you from such indebtedness," the betrothal is valid.

11a. If a man lends money to a woman on a pledge, and he says to her: "Thou art betrothed to me with the money thou owest to me," the betrothal is valid (Kidushin 19a).

11b. It is disputed whether, in such a case, it is necessary that he return the pledge to her or not (Maimonides holding that the pledge must be returned, and other jurists holding that it must not be returned).

12. It is disputed whether betrothal takes effect in the event the man says to the woman: "Thou art betrothed unto me with the money which the man

owes to me," if this took place in the presence of a debtor.

12a. All jurists, however, concur that if the man thus betroth the woman in the absence of his debtors, the betrothal is doubtful, even when he legally assigns unto her the promissory notes which he holds from such debtors.

13. If a man borrows an article from another and notifies him that with this article he is about to betroth a woman, the betrothal is valid. If he failed to inform the lender of the object of his loan, the betrothal is doubtful. The same rule of law applies to a case where a man hires an article (Tur).

CHAPTER XXIX.

The Money Must Be Given Away Unconditionally.

1. If a man says to a woman: "Thou art betrothed unto me with this coin, on condition that thou return the coin to me," the betrothal has no effect (Kidushin 12b).

2. If a woman says to a man: "Make a gift of some money to such and such a person, and in consideration thereof I shall become betrothed to thee," and the man gives the money to such a person and says to the woman: "Thou art betrothed unto me

in consideration of the gift which I made at your request," the betrothal is valid (L. c.)

3. A woman says to A: "Give a certain coin to B, and I will be betrothed unto him." A gives the coin to B, as requested, and the latter says to the woman: "Thou art betrothed unto me in consideration of the pleasure you derived in my accepting this gift at your request," the betrothal is valid (Kidushin 7a).

4. A says to a woman: "Take this coin belonging to me, and thou shalt become betrothed to B therewith." B then says to the woman: "Thou art betrothed unto me with the money which was given thee by A." The betrothal is valid, and it is immaterial whether B has appointed A to act for him as his agent or not (L. c.)

5. If a man says to a woman: "Be betrothed unto me with a *denari*" (gold piece; 25 cents in U. S. coin), and he gives her a pledge in the meantime to secure the payment of such coin, the betrothal is of no effect (Kidushin 7a).

6. A man says to a woman: "Be betrothed unto me with one hundred golden *denarii,*" and he gives her only one *denari,* the betrothal takes effect from the time she accepted the *denari,* but he is bound to pay her the balance of the sum mentioned by him. For, this case is analogous to a case where a man

says to a woman: "Be betrothed unto me with this denari on condition that I give you thereafter two hundred denarii," in which case the betrothal takes effect immediately upon her receiving the denari (Kidushin 8a).

7. The aforesaid rule of law, however, holds good only in a case where he says to her: "Be betrothed to me with the sum of one hundred denarii," but if he says to her: "Be betrothed to me with *these* two hundred denarii," and he begins to count it into her hand, and finds he is short of the amount, the betrothal is of no effect unless he gives her the entire sum mentioned by him. In such a case, even if there is only one denar short, both of them may rescind, unless he says to her that such denar which is short shall be considered as a loan made from her to him, and she consents to it (L. c.)

8. A man says to a woman: "Be betrothed to me with this denari, on condition that I give you thereafter up to the sum of one hundred denarii," and the woman replies: "On condition that you give up to me the sum of two hundred denarii." No more negotiations having taken place between them, each of them has departed. Thereafter the man opened negotiations again, and upon meeting her he betrothed her with the denari. In such a case she is not betrothed unless he gives the two hundred denarii mentioned by her (because his having opened nego-

tiations again signified that he was willing to abide by her conditions). If, however, the woman has again opened negotiations, and he met her and betrothed her with the denari, he is bound to give her only the sum of one hundred denarii (Tosefta, Kidushin).

9. If a man says to a woman, "You are betrothed to me with this cup," and it was not stipulated by the man if he betrothed her with the cup or its contents—then, if the cup was filled with water she is betrothed with the cup and the water; if it was filled with wine she is betrothed with the cup and not with the wine. If it was filled with oil she is betrothed with the oil and not with the cup. Therefore the oil must be appraised. If it is worth a cent, then is the betrothal valid; if less, it is not valid (Kidushin 48).

9a. Other sages hold that if the cup was full with water the betrothal takes effect with the cup. If it was full with wine, then the betrothal takes effect with the wine. If it was full with oil, then it takes effect with it too.

10. If a man has any kind of vessel or all kinds of foods and the woman says to the man, "Give me a few of them," and the man says, "If I give you, will you be betrothed to me?" If the woman says yes, and he give them to her, the betrothal takes effect.

11. If she says give it to me, or throw it to me, and he gives it to her, the betrothal takes no effect, because she takes it as a joke.

12. In the same event, if the man is drinking wine and the woman says, "Give me one cup of wine," and he says, "If I give it, will you be betrothed to me?" and she says, "put it to my mouth," or "put it in my hand," the betrothal takes no effect.

13. If he says at the same time, "When I give it to you, you are betrothed to me," and she receives it, the betrothal takes effect.

CHAPTER XXX.

How Delivery of Betrothal Money Must Be Made.

1. If one betroths a woman it is not necessary that he deliver the coin or the document with which he betroths her into her hand. If the woman accepts his betrothal proposal, he throws the coin or the document into her hand, or into her lap, or into her courtyard, or into her field, the betrothal takes effect (Gittin 71a).

2. If the woman is standing in the premises belonging to the man, and he betroths her there, the betrothal takes no effect unless he delivers it into her hand or into her lap (L. c.)

3. If a man says to a woman, "Thou art betrothed unto me with this coin," and she takes it and throws

it into the sea or into the fire in his presence, the betrothal is not valid (Kidushin 8).

4. If a man says to a woman, "Thou art betrothed unto me with this coin," and she says, "Leave it on this stone," if the stone is her's, it is valid; otherwise it is not valid. If it belongs to both, then the betrothed is doubtful (L. c.)

5. If a man says to a woman, "Thou art betrothed unto me with this bread," and she says, "Give it to this poor man," even if the poor man is supported by her, it is not valid, for they bear alike the duty to support the poor (L. c.)

6. If a man says to a woman, "Thou art betrothed unto me with this bread," and she says, "Give it to this dog," if the dog is her's, it is valid; but if it is a stranger's dog, it is void. If the dog ran after her threatening to attack her and she ordered the bread given it, then the betrothal is doubtful. These rules apply only when afterward he gives these articles into her lap (L. c.)

7. There is a difference of opinion as to when a woman says to a man, "Give bread to the dog or leave it on the stone and I will be betrothed unto you," if it is valid or not (L. c.)

8. If a man says to a woman, "Thou art betrothed unto me with this coin," and she says, "Give the money to my father to to your father," even af-

terwards the man says, "You are betrothed unto me with the money what I give to them," this betrothal is not effective. If, however, the woman says "On condition that my father or your father received the money," the betrothal is effective.

9. If the woman was indebted to someone and the creditor pressed her for the money, and the man says, "You are betrothed to me with the money," and she answers, "Give it to my creditor." If the creditor was a heathen, the betrothal takes effect; but if an Israelite, the betrothal is doubtful (Radbas).

CHAPTER XXXI.

1a. No betrothal takes effect if the consideration received by her is valued less than a perutha (one cent) (Gitten 71a).

1b. If he betroths her with an article, not mentioning what the value thereof is, it is not necessary that the article be appraised before the betrothal takes place in order to ascertain if it is worth a cent. He may first betroth her with the article, and if after the betrothal it is found that it is worth a cent or over, the betrothal takes effect (Kidushin 7b).

In a case where the man, upon betrothing the woman with an article, says that it is worth a certain sum of money, it is not necessary that the article be first appraised to ascertain if it is really worth

the sum mentioned by him. If it is afterwards found that it is worth the sum, it is valid.

CHAPTER XXXII.

Betrothing With a Document.

1. A man may betroth a woman by writing upon a piece of paper or a fragment of clay vessel: "Thou are betrothed to me," and such writing must be handed to the woman in the presence of not less than two witnesses (Kidushin 9a).

2. It is not necessary that the paper or the fragment of clay vessel upon which it was written be worth a cent in order that the betrothal may have effect (L. c.)

3. The man, upon writing the document with which he is to betroth, must have it in mind that this writing is intended for the very woman whom he subsequently betroths. If he writes it with the intention of delivering to one woman and then betroths another therewith, the betrothal is not valid (L. c. 9b).

4. The document must likewise be written with the woman's knowledge and consent. If it was written without her knowledge and consent, the betrothal is doubtful (L. c. 9b).

CHAPTER XXXIII.

Betrothing With Cohabitation.

1. On account of morality, it is prohibited to betroth a woman with cohabitation. If, however, a man says to a woman: "Thou art betrothed to me with this intercourse," the betrothal takes effect, provided it is corroborated by at least two witnesses (Kidushin 2a).

CHAPTER XXXIV.

Betrothal Benedictions.

1. It is a grave religious offence to have intercourse with a bride without having the benedictions uttered.

2. The benedictions must be uttered in the presence of at least ten male persons, the bridegroom himself to be included in the required number.

3. Before the betrothal takes place, a benediction is uttered over a glass of wine or beer, and after the betrothal six more benedictions are uttered.

4. It is necessary to utter the benedictions for seven successive days following the marriage ceremony, if a bachelor marry even a widow, or vice versa, if on each and every of such days there is a new guest or guests; if a widow marry a widower, only three days benedictions.

5. On the Sabbath following the marriage ceremony the benedictions must be uttered, even in case there are no new guests.

CHAPTER XXXV.

Appointing An Agent To Betroth.

1. A man may appoint an agent to betroth for him any woman or a certain particular woman (Kidushin 41a).

2. The agent must say to the woman upon betrothing her: "Thou art betrothed to such and such a man" (Tur).

3. However, if it is possible to betroth her in person, he is forbidden to do so by an agent, unless he is well acquainted with the woman whom he wants to betroth. For, should he betroth a woman through an agent without knowing her, he may thereafter for one reason or another dislike her (Kidushin 41a).

4. Even in the event he is well acquainted with the woman, it is a meritorious act for a man to betroth a woman in person, if it is possible (L. c.)

5. An agent is competent to testify as a witness to the betrothal effected through him. If, therefore, a man appoints two agents to betroth a woman for him, no other witnesses need be called in to witness the betrothal (Kidushin 43a).

6. Everybody is competent to act as agent for a man for the purpose of betrothing a woman, excepting the deaf and dumb, the insane and a minor, because they lack understanding (Gittin 23a).

7. A man says to his agent: "Go to such and such a place and betroth a woman for me." The agent then goes to a place other than the one pointed out by his principal and betroths a woman there, such betrothal has no effect (Kidushin 50a).

8. Whenever an agent fails to comply with the instructions given to him by the principal, as when he was instructed to betroth a woman unconditionally and he betrothed her conditionally, or *vice versa,* or where he changed or modified the condition made by the principal, the betrothal does not take effect (Maimonides).

9. A man appoints an agent and says to him: "Go and betroth for me that woman who is to be found in such and such a place." The agent goes and betroths the woman mentioned, but she was then found in another place than the one mentioned by the principal. The betrothal takes effect, because the principal mentioned the place in order to facilitate the task of the agent in locating the woman, and had no intention to make the location a condition of the betrothal (Kidushin 50a).

10. If a man appoints an agent to betroth the

woman for him, and the agent betroths the woman for himself, the agent is guilty of deception, but the betrothal is valid if he betrothed her with his own money (L. c. 58b).

11. Even if the agent at first said to the woman that such a man has appointed him as his agent to betroth her for him, and then upon betrothing her he said: "Thou art betrothed to me," the betrothal takes effect, provided that the woman well understood what took place and did not object (Rosh).

12. If the woman was unwilling to be betrothed to the principal and the agent has betrothed her to himself, the latter is not guilty of deception (Kidushin 59a).

13. A man appoints an agent for the purpose of betrothing a woman for him. The agent accordingly leaves to execute his mission, and is thereafter found dead, and it cannot be ascertained whether he did betroth a woman or not. It is presumed as a matter of law that the agent did betroth a woman for his principal, because there is a presumption that an agent performs the duty resting upon him. The principal is, therefore, prohibited from marrying any woman who has such relatives as would be forbidden to him on account of consanguinity (affinity), as a woman who has a daughter or a mother or the like. He is permitted to marry a woman who either has no such relatives, or who has such relatives, but

were married at the time the agent was appointed (Nazir 12a).

CHAPTER XXXVI.

A Woman Appointing An Agent For Betrothal.

1. A woman may appoint an agent to accept betrothal for her. It is nevertheless preferable that she accepts the betrothal in person, but there is no prohibition in the case of a woman as there is in the case of a man (Kidushin 41a).

2. The man to whom the woman's agent came with betrothal propositions must say to the agent: "The woman who designated you agent is betrothed unto me." If the agent replies thereto: "I betroth her unto you," or if he simply says yes, or even if he makes no reply whatever, the betrothal is valid (Maimonides).

3. There is an opinion that an agent appointed for the purpose of betrothing a woman cannot himself appoint a sub-agent to act in his stead.

4a. A woman appoints an agent to accept betrothal from a certain man. After the appointment of the agent she accepts betrothal from another man, and the agent likewise accepted betrothals in compliance with her instructions. If it cannot be ascertained whether her agent accepted the betrothals first or whether she herself has accepted first, she is not permitted to be married to either one, and, in order to

be allowed to marry another, she must obtain a bill of divorce from both of them. It is also permissible that she accept a divorce from only one of them and become the wife of the other (Kidushin 79a).

4b. However, the one whose legal wife she elects to be, must betroth her again (Rabbi Moses Iserlish).

5. The foregoing rule of law applies only to a case when the men to whom she was thus betrothed are strangers, but if the agent has accepted betrothal from a father and she accepted it from the son, or if the agent has accepted it from one brother and she accepted it from the other brother, both of them must give her a bill of divorce, and she is forbidden to become the wife of either of them (Maimonides, Kidushin IX).

6. One woman may become the agent of another woman for the purpose of accepting betrothals from a certain man (Kiddushin 52a).

7. A woman cannot appoint an agent for the purpose of accepting betrothals from another agent appointed by the would-be bridegroom (Gittin 63a).

CHAPTER XXXVII.

Betrothal of a Minor.

1. A man is prohibited from accepting betrothal for his minor daughter. He is bound to wait until she becomes of age and she will then be in a position

to point out her choice and say, "This man I want" (Kidushin 49a).

CHAPTER XXXVIII.

Betrothals On Conditions.

1. Betrothal made on a condition, whether the condition was imposed by the man or by the woman, becomes valid only when the conditions are fulfilled, but not otherwise (Kidushin 61a).

2a. A condition is invalid unless it contains the following four clauses:

2b. The condition must be doubled, *i. e.,* the one who imposes the condition must explicitly state: "If you will comply with such and such a condition, our agreement will be binding, but if you fail to comply with such a condition, our agreement will not be binding" (L. c.)

2c. The affirmative part of the condition must precede the negative part thereof (yes stated before no) (Gittin 75a).

2d. The conditions must precede the act which the promisor obligates himself to perform by virtue of his promise (Baba Meziah 54a).

2e. The condition must be such as shall be possible of being complied with (L. c.)

3. If the condition imposed by the man betroth-

ing a woman is not made in accordance with any of the foregoing rules of law, the condition is invalid, and the betrothal takes effect at once as though no condition whatever had been imposed (L. c.)

4a. If a man, at the time he betroths a woman, makes a condition to the effect that he shall not be obligated to provide her with clothes or food, his condition is valid if she accepts the betrothals on such a condition, and he is not obligated to provide for her (Ketuboth 56a).

4b. If, however, the man makes a condition to the effect that he shall have no sexual intercourse with her, his condition is void, and he is bound to cohabit with her after the marriage (L. c.)

5. A man gives a cent to a woman and says to her: "Thou art betrothed to me with this coin on condition that I give you one hundred zuz." When such a condition is fulfilled, the betrothal takes effect as of the date the cent was given to her (Kidushin 60a).

6. If the woman, before the fulfilment of the above-named condition, has accepted betrothals from another man, and thereafter the condition was complied with by the first man, the betrothal of the second man takes no effect (L. c.)

7. If the man says to her: "Thou art betrothed to me with this cent on condition that I give you one

hundred zuz within thirty days from now," the betrothal takes effect from now on if he has complied with such a condition within the thirty days (L. c.)

8. If before the expiration of the thirty days, she accepts betrothals from another man, she becomes betrothed conditionally until the expiration of the thirty days. If at the end of the thirty days the first man failed to comply with the condition, the betrothal of the second takes effect and the betrothal of the first becomes void and she is not required to obtain a bill of divorce from the first. If within the thirty days the first man has complied with the condition, the betrothal of the first only takes effect and she is not required to obtain a divorce from the second man (L. c.)

9. If a man says to a woman: "Thou art betrothed unto me on the condition that my father consents to such betrothal," if the father expressly objected to it, or if he kept silent when asked, or if he has died before he became aware of such betrothal, the betrothal is invalid (Kidushin 63a).

10. If a man betroths a woman on a condition, he may thereafter waive such condition. It is not necessary that such waiver of condition be made in the presence of witnesses (Ketuboth 73a).

11. The same rule of law applies to the case where the woman has imposed conditions before accepting the betrothal. She may thereafter waive them (L. c.)

12. In the case of betrothal, if the condition imposed by the man inures to the benefit of the man, as when he makes a condition that the woman has no deformities of body, or that she is not bound by any vows, or the like, it is within his power to waive such a condition; but if it inures to the benefit of the woman, as when he imposes a condition that the woman shall receive from him two hundred zuz, or the like, he cannot waive such a condition; and, if she does not consent to a waiver, she does not become betrothed if the condition is not complied with (Beth Joseph).

CHAPTER XLII.

Betrothal Requires Woman's Consent and Witnesses.

1a. A woman does not become betrothed unless it takes place with her consent (Kidushin 2a).

1b. If one betroths a woman by force or under duress, the betrothal has no effect (Baba Bathra 48b).

2. It is disputed whether or not the betrothal takes effect in a case where a man is forced to betroth a woman. Such betrothal is therefore doubtful.

3. If one betroths a woman when there were no witnesses present, or if there was only one witness, the betrothal takes no effect, even when both the man

and the woman admit that such betrothal has taken place. The betrothal is likewise ineffective in a case where the man first betroths a woman in the presence of one witness and afterwards betroths her in the presence of another witness, and one witness was not in the presence of the other witness (Kidushin 65a).

4. If a man betroths a woman in the presence of witnesses disqualified from testifying by the Law of Moses, the betrothal takes no effect (Kidushin 27b).

If one betroths in the presence of witnesses disqualified from testifying by rabbinical enactment, he must betroth her again, before eligible witnesses, if he is willing to marry her. If he does not want to marry her, he must give her a bill of divorce, because the betrothal is doubtful.

CHAPTER XLIII.

Betrothal of a Minor.

1. A minor (under the age of thirteen years and one day) cannot betroth or marry (Yebamoth 96b, 112).

2. It is forbidden to cause a male or female minor to marry.

CHAPTER XLIV.

Betrothal of the Deaf and Dumb and Insane.

1. By the Law of Moses, a deaf and dumb man cannot betroth, and a deaf and dumb woman cannot accept betrothal. The Sages, however, have enacted that they shall be able to marry. If, therefore, A, a deaf and dumb man, has married B, and thereafter C betrothed B, the betrothal is legally effective and C must give her a bill of divorce. If such divorce is given, B may again live with A, her deaf and dumb husband (L. c. 112b).

2. Neither the Mosaic Law nor the rabbinical law validates the betrothal of an insane man nor of an insane woman (L. c.)

3. If an intoxicated person betroths a woman, even if he is very intoxicated, the betrothal is valid. If, however, he was intoxicated as Lot had been, the betrothal is ineffective (L. c.)

4. If an Israelite betroths a heathen woman, or if a heathen betroths an Israeliteish woman, the betrothal takes no effect (Mishnah Kiddushin).

5. If an hermaphrodite betroth a woman or becomes betrothed to a man, it is doubtful whether it is valid, because an hermaphrodite is of doubtful sex.

6. If a man betroth a woman forbidden to him by the Law of Moses, the betrothal is void and no divorce is necessary.

7. If a converted Israelite betroths a woman, the betrothal is valid, and the woman, in order to remarry, must obtain from him a bill of divorce (Yebamoth 47b).

CHAPTER XLIX.

1. The man who is not well versed in the laws appertaining to divorce and betrothal is prohibited from deciding questions of law involving divorce or betrothal, because he is apt to render a wrong decision and thus legalize forbidden marriages and increase the number of bastards among Israel (Kiddushin 6a).

2. Therefore, the Rabbi Tam and Raboni Chorfas put a ban upon the man who performs the marriage ceremony and divorce unless he has a diploma of competence. This is to prevent wrongful marriages.

CHAPTER L.

Laws Relating to the Return of Betrothal Considerations, Gifts and Penalties.

1. If a man betroths a woman and thereafter either he or she retracts, or either he or she dies, or he divorces her, the money or the article which she has received in consideration of her accepting, the betrothal does not have to be returned to him, even if such consideration amounts to the sum of one thousand *denarii,* because such article is considered a *true* gift (Baba Bathra 145a).

2. If, however, the betrothal took place erroneously, or if it was made conditionally and the conditions were not complied with, the consideration for such betrothal must be returned. Likewise, the consideration must be returned in a case where the betrothal is doubtful (Ketuboth 76b).

3. If one betroths his sister, the money which he has given her as a consideration therefor becomes a gift. It is a fact known to everybody that the betrothal takes no effect with a sister. The man, therefore, that does betroth his sister, has not done so through a mistake of the law, but has originally intended to make it a gift to her (Kidushin 46b).

4. A betroths B, and sends gifts to B's house, consisting of articles of value and of food and drink. Should either A or B die, or A retract the betrothal, all the gifts, except the food and drink, must be returned to him, and it is immaterial whether the articles are of great value or of small value, or whether A has partaken of the betrothal feast at his intended father-in-law's or not (Baba Bathra 146b).

5. Another opinion holds even the food and drink must be returned when the bridegroom does not eat anything in the father-in-law's house, and if he eats in that house the food and the drink, the small articles need not be returned (Ramo).

6. If the bridegroom retracts because the father-in-law promises him a dowry and fails to observe the condition, the bridegroom is reimbursed even for the food and drink (L. c.)

7. If a bridegroom refuse to come to the marriage ceremony, the guests having requested him to come, and he has already changed his mind, then afterwards the bride says, "At first you refused me; now I don't want you," the bride is free from all charges of expense (L. c.)

8. And the same rule applies when the bride refuses on account of the bad temper of the bridegroom, because he smacked her; she is free from all charges of expense (L. c.)

9. If A sends B some money or small articles to be used by her while in her father's house, and she accordingly makes use of the same and some of them become worn out or lost, she is not bound to pay for the same. If, however, such articles have not been used by her, everything must be returned to him. A may obtain possession of the same through a court of law, because it is known that such articles are sent as a matter of formality only, and not as an absolute gift.

10. If B retracts the betrothal, everything must be returned to A, even the various foods and drinks (Baba Bathra 146b).

11. In the case of food and drink, however, only two-thirds of their value are paid, as when the value of the same is six denarii, B is bound to pay only four for the same (L. c.)

12. If it is the custom of the locality that the bridegroom makes a feast for all his friends, or if it is customary to give money to the sextons, readers and the like, and A has acted in accordance with such custom when he has betrothed B, if B retracts, she must pay for the loss sustained by A, because she caused all this loss to him. In such a case it is the duty of A to prove with witnesses how much he has thus spent (L. c.)

13. A agrees to marry B's daughter. B sends clothes and jewelry to A, and thereafter either A or B retracts, A must return to B everything he has received from him, because it is presumed that B has sent the articles to A only in consideration of his subsequent marriage to his daughter (Rashba).

14. A agrees with B to marry the latter's daughter, and to confirm such promise one makes a symbolic agreement with the other, and each one of them takes an oath, and each one deposits promissory notes with a third party to be forfeited in the case of retraction on either side. If it happens thereafter that a sister of the would-be bride becomes a convert, A may legally retract, and he is freed from the agreement, the oath, and likewise from the liability of the

promissory note (Tur); and if, in such a case, the third party surrenders A's promissory note to the would-be bride, such delivery has no effect whatever (L. c.)

15. If, in the foregoing case, the bride-to-be has become insane thereafter, A may likewise retract (L. c.)

16. If A, the bridegroom-to-be, becomes a degenerate in the meantime, as when he becomes a gambler or the like, the would-be bride may retract, and she is absolved from the agreement, the oath and also from the liability of the promissory note. If the third party surrenders the note to the bridegroom-to-be, such delivery has no effect whatever (L. c.)

CHAPTER LI.

The Validity of a Verbal Agreement.

1. A makes marriage proposals to B. B agrees to bring upon her marriage a certain sum of money, and A agrees to provide for her a certain sum of money in the marriage contract. If thereafter A betroths B, their verbal agreement is binding, although there was no form of agreement made between them. The same rule applies in the event of the first marriage (Ketuboth 102b).

2. If the father promises to his son or his daughter a dowry in the second marriage, it is not valid without a form of agreement from the promisor.

3. In the first event the promise is like a *legal* debt, and if the promisee dies before the marriage of his daughter, the bridegroom can collect from the heirs, even from sold property, like other debt.

4. The bridegroom must pay the fee for the writing of the contract of engagement when only one copy is written; and if two copies are written *each one* must pay half.

5. Everything that is promised to the bridegroom must be given before the marriage *and the promisor* cannot say "marry first, and I will pay after the marriage."

6. If he wishes to deposit the promised money with a third party, he may do so.

7. If a man takes an oath to give to his son-in-law a dowry, and the son-in-law strives with his wife, he does not have to fulfill his promise.

CHAPTER LII.

If a Man Promise Money to His Son-in-Law and He Refuses to Give It.

1. If a man promises a dowry to his son-in-law in the second marriage and the father was away in a far country, or he have nothing to give, the bride can say to the bridegroom, "I have not promised any dowry to you; only my father. What can I do? Either marry or divorce me." Note: At that time, it

was necessary to obtain a divorce in order to break an engagement or betrothal.

NOTE—He can claim the dowry before he marries her, but after the marriage it is not permitted that the bridegroom should strive with his wife on account of the dowry (see Chap. 2).

CHAPTER LIII.

1. In case a father promised a dowry to his daughter at the time of the engagement contract, should his daughter die before the marriage ceremony was performed, he need not pay the dowry, because his purpose was not accomplished.

2. Should the daughter die shortly after the ceremony and the dowry was unpaid, there are two judicial opinions governing this case, namely, whether he shall or shall not fulfill his dowry contract.

3. Where the point is disputed as to the law, possession is considered nine points in favor of the possessor. Therefore, if the dowry is unpaid, the father need not pay it; but should he have paid it to the bridegroom, it is the lawful property of the bridegroom. If a note was given, the note need not be paid.

4. Should the bridegroom have returned the dowry, he may compel his father-in-law to return it, as it was only in the nature of a loan.

5. The above is rabbinical law. The following decision was handed down by Rabbi Tam.

(NOTE—A noted rabbi of the time shortly after the Jews left Jerusalem.)

6. If the daughter or son died during the first year following the marriage, and there were no children resulting from the marriage, the unspent dowry must be returned to the father-in-law or his heirs. If the daughter or son die the second year after the marriage, half the dowry must be returned to the giver.

7. He (or she) is not permitted to squander, but he (or she) is permitted to deduct all expenses due to the sickness of the wife (or of the husband).

8. If property was given as a dowry, the father-in-law or his heirs may forbid the bridegroom (or the bride) from selling it during the first two years.

9. This custom applies only to the dowry, the wedding presents, or if the wife (or the husband) was heir to property, these need not be returned to the father-in-law, or to the heirs.

10. Even if a stranger gave the dowry, it must be returned to him, if during the first two years the bride (or the bridegroom) died.

11. If the bride herself (or the bridegroom himself) provided the dowry, it belongs to the bridegroom (or to the bride).

CHAPTER LIV.

1. If a father deposited the dowry with a trustee and he died before the wedding, then, if his daughter, even if she is of age, wants to give the dowry to her husband, she need not be obeyed. But, if, after the wedding, she permits the trustee to give the dowry to her husband, she may be obeyed (if she is of age) (Ketuboth 107).

CHAPTER LXVI.

Laws of Marriage Contract.

1. It is forbidden to be in privacy with a bride-to-be before the marriage contract has been written for her (Ketuboth 102b).

2. Even if the husband desires to assign real property or money from which the amount of the marriage contract shall be collected, it is invalid.

3. The husband must mention in the contract of marriage that he becomes personally liable for the payment of such amount and that all his property shall become liable for the payment of the same (Ketuboth 80a).

4. If the contract of marriage is lost, or if the wife has released her husband from liability, as when she has given him a receipt to the effect that she has received the full amount mentioned in the contract of marriage, it is the husband's duty to give her another

contract for the amount provided for by law, for a man is prohibited from living with his wife without a contract of marriage, even for one hour (Ketuboth 56).

5. In case the contract of marriage is lost and witnesses recall the date on which the original contract was written, the date of the original contract is now written in the duplicate. If the witnesses do not remember the date of the original, the duplicate contract is written as of to date (Tur).

6. In the case where the woman has released her husband, the second contract is written as of to date, even when the witnesses remember the date of the first contract (L. c.)

7. If a woman sells her contract to her husband, he must give her another contract. If, however, she sells her contract to a stranger, the husband is not bound to give her another contract (Baba Bathra 87b).

8. The sum to be mentioned in the contract of marriage given to a virgin is not less than two hundred zuzim, and in the contract given to a widow it is not less than one hundred zuzim. It is permitted to increase the amount of the marriage contract (Ketuboth 10b).

9. If anyone deducts from the sum hereinbefore provided, his carnal knowledge of her is considered as adultery (Ketuboth 54b).

CHAPTER LXIX.

1. A man cannot say to his wife: "I will not support you and I will not take from you whatever you earn" (Ketuboth 58a).

2. A man may, however, say to his wife: "Keep whatever you earn to yourself for your support, and if this does not suffice, I will give you the balance" (Ran).

CHAPTER LXX.

Laws Concerning Support, Etc.

1. If a man marries a woman and she afterward becomes insane, he is bound to support her and also to provide medical treatment for her (Rashba).

1a. If the husband wants to support his wife without living together with her, that cannot be done without her consent (Ketuboth 64b, Tur).

2. If a man goes abroad and leaves some articles of value with a certain man for safekeeping, the Court has a right to take such articles from the bailee's possession for the purpose of supporting his wife, if he failed to provide for her (L. c.)

3. The above rule of law holds good even in a case where the husband has expressly ordered the bailee not to give any of the articles to his wife (Mordecai).

4. If the bailee returns the articles to the hus-

band after a demand has been made on him by the woman, he must pay their value to the woman (L. c.)

5. If A hires out his articles to B or borrows for a certain time, and goes beyond seas, A's wife cannot take such articles from B to be sold for her support before the time for which they were hired expires (Rashba).

6. Some authorities say, if a man is unable to support his wife, even with bread, he is compelled to divorce her, and the money of the marriage contract is a debt till he is able to pay. Another authority says that he is not forced to divorce her on the ground that he is poor and unable to support her (Ketuboth 77).

7. If a man have food enough only for one day, he must share the same with his wife (Tur).

8. It is the duty of each husband to be hired, even as a laborer, for any hard work in order to support his wife (L. c.)

9. If the husband possesses real property the wife has the right to sell the same in order to get her support, either from the fruit or from the funds, if there is not enough from the fruit (Raschbo).

10. If a man goes abroad and the woman comes to Court to demand support, it is not permitted to give her a decision for support for the first three

months because it is assumed that the husband did not leave an empty house, and after three months, even if she has not the marriage contract in her hand, the Court must give her a decision for support; and when he has real or personal property, the Court has the right to sell it and support the wife, even if it is not known that he is dead. If the wife herself sells some of the estate for support, without the permission of the Court, it is valid, even without oath or publication, till the husband shall come and claim therefor (Ketuboth 107).

11. If the husband leave the home on account of strife, and he ran away with the intention of deserting the wife forever, the Court must allow her support immediately (Mordecai).

12. If the woman after three months was silent, she cannot demand support for the time she remained silent, but she can have support from the date of the claim, even if the Court adjourns the trial for any length of time (Ran).

13. If the Court gives her a judgment for support and collect from the estate of the husband, and assigns another to loan her money of support, and afterward the husband died and there is nothing to collect from, she is not responsible. If the Court says to the creditor, borrow her money, she is responsible (Raschbo).

14. If the woman leaves her husband's house and moves into another house, if she has good reasons for same on account of bad neighborhood or strife between her and her husband, she is entitled to support. If she is not capable of giving sufficient reasons for leaving her husband's home, she loses the right of support, because it is not the duty of the husband to support his wife, except when she lives with him, because she is bound to serve him (Ketuboth 103).

15. If the husband goes to another city and the wife moves from the rooms, she does not lose the right of her support.

16. If a man goes abroad and fails to provide for his wife, and she borrows money for her support, the husband is bound to pay the same (Ketuboth 107b).

17. In such a case, the creditors must demand it from her, and she in turn demands the same from her husband. If the woman shall have released her husband from the aforesaid obligation of support, the creditor can collect nothing (Ran).

17a. If the law is on the side of the woman, even when the husband notifies the creditor not to trust the woman on his account and she borrows, the husband is responsible for payment.

17b. If a man voluntarily supports the woman,

he cannot demand his expended money from the husband (Ketuboth 107).

17c. If, however, the volunteer supporter is in debt to the husband or he supports her from the fortune of the husband, the supporter must take an oath to prove how much he spent and then he is free of liability.

18. If a man upon leaving says to his wife: "Apply whatever you earn to your support," and she keeps silent, she has thereby relinquished her right to support (Ketuboth 107b).

19. If a man goes abroad and his wife makes no demand for her support and she does not make any loans for such purpose, but she works by day and night in order to maintain herself, she thereby relinquishes her rights to support. If there is anything left over and above her living expense, it belongs to her (L. c.)

CHAPTER LXXI.

A Man's Duty to Support His Children.

1. A man is bound to support his children, whether male or female, until they reach the age of six years, even in the event they have inherited property from their mother's father (Ketuboth 65b).

2. By rabbinical enactment, a man is likewise

bound to support his children from the age of six until they become of age (Ketuboth 49b).

3. If a man goes beyond the seas and leaves his children without providing for them, the Court has a right to sell his property for the purpose of supporting his children until they reach the age of six, but not more (Ketuboth 45b).

3a. If, however, a man has supported his children from the age of six, the Court may order the property to be sold for their support until they have attained full age.

4. If a man becomes insane, his children are to be supported from his estate until they become of age, although they are now over six years of age (Ketuboth).

5. If an unmarried man has carnal knowledge of an unmarried woman, and she gives birth to a child, if it is definitely proven, by his admission or otherwise, that she became pregnant of him, he is bound to support the child (Rabenu Asher).

CHAPTER LXXIII.

A Man's Duty to Provide His Wife With Clothes, Etc.

1. A man is bound to provide his wife with winter and summer clothes. The clothes must be such as are worn by the women of that locality (Maimonides).

2. He must likewise provide her with a residence, furniture and household furnishings (Mishnah, Ketuboth).

3. He is likewise bound to give her certain ornaments, such as the colored shawl worn by women on the head, powder and a powder-puff and the like (Ketuboth 107b).

4. All this is said concerning a poor man, but a rich man must provide his wife with such jewelry as he can afford to buy (Ketuboth 64b).

5. If a man is unable to provide his wife with all the necessities mentioned above, he is compelled to divorce her (L. c.; see Chap 70, Sec. 6).

CHAPTER LXXIV.

1. A man is permitted to say to his wife: "I do not want your father, or your mother, your brothers or your sisters to come to my house." She is, however, permitted to visit them when anything happens to them, and she is permitted to visit her father's house once a month and on every holiday. They (her relatives) are not allowed to visit her unless something befall her, such as sickness or confinement (Maimonides).

2. A woman is likewise permitted to say to her husband: "I do not want your father, your mother, your brothers or sisters to come to my house." She

also has the right to object to living together with any one of the above-named relatives in the same court-yard, if they bother or annoy her (L. c.)

3. In the last named event it must be proven to the satisfaction of the Court that her complaint is well founded and that such relations annoy her and cause quarrels between her and her husband. If it is not so proven, she has no right to make her husband move away from the court-yard his family lives in, because the dwelling belongs to the husband and not to the woman. It is customary to ascertain the cause of such controversies between a woman and her husband's relatives by making diligent inquiry of neighbors (L. c.)

4. A man has a right to refuse to live with his wife in a certain alley or locality on the ground that bad or immoral people live in such neighborhood, although it is not generally known that there are such people in that neighborhood, In such event, the wife is bound to move out of that neighborhood with her husband, even if the residence belongs to her (Maimonides).

5. So is a man bound to move out of the locality he lives in, in case his wife objects to living there on the ground of bad or immoral people being found in such locality. And this is true, even though he says that he, for his part, does not mind such people (L. c.)

CHAPTER LXXV.

The Law of Different Countries.

1. If a man of another country marries a woman of this country, even if the countries are different in language, without stipulating where they are to live, she is forced to go with him to his country, or if she does not obey him she can be divorced and lose the money mentioned in the marriage contract, because she knew that he was not of her country and she agreed to these conditions (Ketuboth 110).

2. If she is used to living in a small town he cannot make her move to a big town or *vice versa* (L. c.)

3. If they both are from one country, she cannot be forced to go with him to another country; but he can move in the same country from one city to another (L. c.)

4. If a man cannot make a living in one country and he wants to go to another country to make a living, she is forced to go with him. If she refuses, she loses the rights of all the duties from the husband to the wife. Another opinion holds she is not bound to them (Ramo).

CHAPTER LXXVI.

1. A man is bound to cohabit with his wife, as this is one of the three obligations a man owes his wife (Ketuboth 61b).

2. A man is bound to have sexual intercourse with his wife on the night she cleanses herself from her uncleanness, and also before leaving on a distant journey (Yemaboth 62).

3. A woman may prevent her husband from going to trade in a distant place, from where he will be unable to come home frequently, and he must obtain his wife's permission when going out of town for any considerable length of time (L. c., Mishnah).

4. In the places where it is customary to marry only one wife, a man is not permitted to marry two wives without first obtaining the consent thereto of his first wife (see Chapter I).

5. If a man refuses to cohabit with his wife for the reason that he desires to annoy her therewith, he is guilty of violating a prohibitory command of Torah: "And her duty of marriage shall he not diminish" (Exodus xxi, 10). If a man becomes sick or impotent, and is unable to have intercourse with his wife, six months are given him within which to recover from his illness. If he does not recover at the expiration of six months and his wife does not consent to live with him, he is bound to divorce her and pay her the entire sum of money mentioned in the contract of marriage (Maimonides).

CHAPTER LXXVII.

1. A woman who refuses to cohabit with her husband is called a rebellious woman (Ketuboth 48a).

2. If she said the reason she refuses to cohabit with her husband is because she dislikes him, if the husband is willing, he may divorce her, and she is not entitled to the sum of money mentioned in the contract of marriage.

3. Upon receiving such bill of divorce she may take with her all her old clothing and other belongings, which she brought to her husband on the day of her marriage, and she is bound to return everything that was given to her by her husband. All gifts that she has received from him, even the shoes she wears and the shawl that she covers her head with, must be returned to the husband (Maimonides).

4. If the woman says that she rebelled against her husband for the reason that he has mistreated her or because he has quarreled with her or the like, a warning is given her by the Court that in case she continues thus to rebel, she will lose all rights under the contract of marriage. For four successive Sabbaths this fact is made public in all synagogues and announced thus: "Such and such a woman has rebelled against her husband." At the expiration of the four Sabbaths, another warning is given her by the Court to the effect that in case she does not become reconciled to her husband she will lose all her rights created by the contract of marriage. If she still persists, her husband may divorce her and she is not entitled to any of the rights provided for in the marriage contract (Ketuboth).

5. Should the woman die before she accepts the bill of divorce from her husband, he becomes the heir to her property, and he is bound to pay all the funeral expenses (Rabbi Moses Iserlish).

CHAPTER LXXVIII.

Duty of Husband to Release His Wife.

1. It is the duty of the husband to release, or ransom, his wife from detention, or captivity, without considering the costs (Ketuboth 51).

2. If the woman is suspected of willingly being adulterous while being in detention, or in captivity, her husband need not secure her release, or ransom her (Ramo).

3. He cannot claim to be immune of the responsibility to release, or ransom, his wife, even if he would deny himself the use of the fruit of her dowry. He must release or ransom her.

4. This same rule would apply to present conditions of arrest or detention.

5. It is disputed whether she should be released if such arrest or detention is due to her breaking of the law on account of her neglect, to wit: If she has committed theft or is guilty of riotous or disorderly conduct (Pischi Tsuvo).

6. Should it happen that the sum of money asked for her release, or as bail, is more than that of

the amount of the marriage contract, he must release her.

7. If the husband is on a far journey, it is the duty of the Court to release her with moneys of his estate.

8. If both the husband and the wife are detained, or in captivity, the wife should first secure her liberty, and he should be released afterward (Haraess 13).

9. If the woman in captivity is the wife of a cohen (priest), he must secure her release, although he cannot hold her as his wife, and must divorce her and give her the amount of the marriage contract and return her to her father's house (Ketuboth 51).

10. If a man marries a woman forbidden to him by law, he need not release her, but must return to her the amount of the marriage contract, and she will ransom herself (L. c. 52).

11. If the captive woman is a widow, the heirs of the estate need not release her because the responsibility of the husband ends with his death. They need not release her, even if she was captured during his lifetime and he died before she was released (L. c.)

CHAPTER LXXIX.

1. A man is bound to provide medical attendance for his wife in case of sickness, if she is sick con-

stantly, and the cost for curing the same cannot be ascertained, or if she is sick temporarily and the cost for curing her is ascertainable (Ketuboth 51b).

2. A widow is not entitled to receive medical care at the expense of her husband's estate unless she is stricken with a permanent disease and the costs for her cure cannot be ascertained (Ketuboth 52a).

3. In the case of a very prolonged sickness, the husband may say to her: "Here is the amount mentioned in the marriage contract; expend the same for medical care, or I will divorce you and give you the money you are entitled to obtain from me in such event" (Maimonides; Ketuboth 52a).

4. It is, however, highly improper for a man to do so as against public policy and the rules of ethics (Maimonides).

CHAPTER LXXX.

1. If it is the custom of the locality for women to weave, to sew, to spin wool or flax, it is the duty of every woman to do so, and the earnings realized therefrom belong to the husband. If it is not customary for women of that particular locality to engage in all of the above enumerated works, a man can force his wife to spin wool only (Ketuboth 51a).

2. If a woman does more than the custom of the locality requires her to do, such surplus belongs to her (Nedarim 65a).

3. Even if a man is wealthy and has many servants in the house, the wife is not permitted to sit absolutely idle, because idleness brings evil thoughts. She cannot, however, be compelled to work the entire day, the nature and the amount of her work all depending upon the amount of wealth possessed by her husband (Ketuboth 51).

4. If a man makes a vow to the effect that his wife shall do no work whatsoever, he is bound to divorce her and pay her the sum of money mentioned in the contract of marriage (L. c.)

5. And it is the duty of every woman to wash her husband's face, hands and feet, and she must fill up the glass for him and prepare his bed (Ketuboth 61a).

6. She must likewise stand before him and render such services to him as to fetch for him some water or a vessel, or take away from before him whatever is not needed by him, and the like.

7. A woman is not compelled to render any services to her husband's father or to his son. If, however, such father and son are supported by the husband, she is bound to render service to them (Ketuboth 61).

8. The kind of services a woman has to render her husband, as mentioned in Section 4 (*supra*), she must do it in person, even when she has many servants.

9. It is the duty of a woman whose husband cannot afford to hire a servant, to grind corn, wheat, to bake, wash, cook and suckle her children and feed the cows, but not the oxen.

10. If the child of a woman dies, she is not bound to nurse the child of a stranger for a compensation and give such compensation to her husband (Rabbi Moses Iserlish).

11. A woman is not bound to suckle a baby which was born to her husband of his former wife (L. c.)

12. If the woman upon her marriage has brought with her a servant, or she has brought with her property sufficient to hire a servant therewith, or if her husband possesses money enough to hire a servant, she is not bound to grind with the hand-mill, nor to bake, nor to wash, nor to feed his cattle (Ketuboth 61a).

13. If the wife claims that he can afford to hire a servant, and he claims that he is unable to do so, she must come forth with evidence to prove her contention (Maimonides).

14. If a woman gives birth to twins, she cannot be forced to suckle both, but she is bound to suckle one, and the husband must hire a nurse for the other (Yerushalmi; Rabbi Moses Iserlish holds that she must suckle both).

15. A man may prevent his wife from suckling

the baby of a stranger together with his own baby (Maimonides).

16. Furthermore, he may even prevent her from suckling her baby, which she had from her former husband, together with his own (Tur; *i. e.,* if she wants to suckle such other baby more than 24 months, *Vide* xiii, 5).

17. If a woman, because of a quarrel, leaves her husband's house and refuses to return unless her husband will come to call for her, she does not thereby lose her right to support, because she is ready to return, and not deny him any of his privileges, but is ashamed to return of her own accord because she left without his permission (Tur).

18. If, however, she refuses to return to her husband unless he first pays all the debts she incurred during such period, she is considered a rebellious woman, and therefore loses her right to be supported (L. c.)

CHAPTER LXXXII.

1. If a woman makes a vow to the effect that she shall not suckle her baby, whether it is a son or a daughter, she is compelled to suckle it until it attains the age of twenty-four months (Ketuboth 59b).

2. If the woman says that she will suckle her child, but her husband does not consent thereto, she prevails over him (L. c.)

3. A woman that has been divorced is not compelled to suckle her child, but if she is willing she may accept wages for suckling the child, and if she is not willing she may intrust the child into his care (L. c.)

4. The above rule of law, however, holds good only when the child is yet very young and is unable to recognize its mother, but if the child is old enough to recognize its mother and it refuses to be suckled by somebody else, although the child is blind, she is forced to suckle him for a period of not less than twenty-four months. The husband, however, must pay for such services (L. c.)

5. If a woman suckles a strange child until it reaches the age of recognizing her, she is forced to continue suckling it for a compensation until the child needs no more nursing, because it is harmful for the child to change nurses at such an age (Rabbi Moses Iserlish).

6. The rule stated above (Section 3) that a divorced woman is not bound to suckle her child, if such child is unable as yet to recognize her, applies only to a case where her former husband can secure another nurse, but if he is unable to do so, either for the reason that he does not possess the means of hiring a nurse or because no nurse is obtainable, she is bound to suckle her child (L. c.)

7. A divorcee is not entitled to support, even

though she suckles her child. The husband must, however, give her something in addition to the sum he pays her for suckling the child, in order that the child be provided with clothes, food, drink, powder and the like. A pregnant divorcee is not entitled to anything whatever (Maimonides).

8. A divorced woman suckles her child for a period of twenty-four months, as prescribed; and then, upon the child being weaned, and the mother being unwilling to part with it, the child is not taken away from her custody until it attains the age of six full years (Ketuboth 65b).

9. In the aforesaid case, the father is bound to support the child while it is in the mother's custody until the age of six years. After the child has attained the above-named age, the father may say: "If the child is not given to me, I will refuse to provide for him" (L. c.)

10. The foregoing rules of law refer only to a case where the child is a male, but if the child is a female, she must be in her mother's custody forever (Ketuboth 102b).

11. If the father's means are sufficient, the Court has the right to take some of his property in order to support his daughter while she is with her mother. Even though the divorcee is married to someone else, the daughter stays with her and her father is bound to support her (L. c.)

12. If, however, in the opinion of the Court, it is to the best interests of the daughter to be with her father and not with her mother, she is intrusted to the father and the mother cannot insist on having the daughter intrusted to her (Rabbi Moses Iserlish).

13. In any event, if the mother of such daughter dies, her mother's mother is not entitled to the custody of the child in preference to the father (L. c.)

14. If, after having weaned the child, whether male or female, the mother is unwilling to have it in her custody, she may not be compelled to do so, but she may give it to her husband, and if the child has no father, she may give it to a public asylum.

CHAPTER LXXXIII.

1. If a married woman receives personal injuries, the damages she recovers for her loss of time and for medical treatment belong to the husband, but the damages she recovers for her pain and suffering belong to her (Maimonides).

2. The damages a woman recovers for her having been disgraced by the injuries and the amount of money she recovers for the damages actually sustained by her must be apportioned between her and her husband as follows: If the injury sustained was received by her on a part of her body which is not hidden from view, *e. g.,* on her face, neck, hands or

arms, one-third of the damages thus recovered belong to her, and two-thirds thereof belong to the husband; but if the injuries were inflicted upon a part of her body which is hidden from view, one-third of the damages belong to the husband and two-thirds thereof belong to her (Ketuboth 65b).

3. The damages to which the husband is entitled are given to him immediately, but with the money she is entitled to recover real property is bought, and the husband is entitled to the usufruct thereof.

4. A woman who receives personal injuries cannot give a release therefor, either for the items of damages belonging to her husband or for the items of damages belonging to her.

5. The foregoing rules of law refer only to a case where the injuries were inflicted upon the woman by a stranger. If the husband himself inflicts injuries upon his wife, he must immediately pay her the entire amount of damages she is entitled to recover for actual damages sustained by her, for the disgrace caused to her and for the pain and suffering she sustained. All the damages she thus recovers belong to her absolutely, and the husband is not entitled to the usufruct thereof.

6. The husband is likewise bound to provide her with medical treatment, as he is bound under the law to do in case of her being ill.

CHAPTER LXXXIV.

1. All articles found by a woman belong to her husband (Ketuboth 65b).

2. The articles found by a doubtful divorcee belong to herself (Baba Metziah 12b).

CHAPTER LXXXV.

1. Guaranteed property of a woman is the property she brings upon her marriage and for which the husband becomes personally liable. If she brings cattle and they die, or their value increases or diminishes, or if they are lost or stolen, it all either inures to the benefit of the husband or it is his loss (Yebamoth 66a).

2. Unguaranteed property is the property belonging to a woman for which the husband did not become personally liable, and if the property advance in value, it inures to her benefit; and if it diminishes, it is her loss (L. c.)

3. If a husband is desirous of bringing legal action against a person, involving the property of his wife, he must first obtain a power of attorney from her before he commence such action (Gittin 48b).

4. If, however, the action involves his wife's realty, to the usufruct of which he is entitled, he needs no power of attorney before commencing

action, because of the fact that he can sue without a power of attorney for the usufruct; he may likewise sue for the real property, for without the realty legally belonging to her, he cannot enjoy the usufruct.

5. A woman borrows a cow from another, thereafter she becomes married and the cow dies in her husband's possession, he is not liable therefor, even if it occurred through his gross negligence, because he is considered as a purchaser. The woman, however, must pay for such cow as soon as she gets sufficient funds for the same.

6. If, as aforesaid, the woman upon her marriage has informed her husband that the cow was borrowed by her, he becomes liable therefor in her stead (L. c.)

7. If a man sells real property to his wife, if the money wherewith she bought such property was not concealed by the woman, but the husband was aware of the fact that she was in the possession of such money, the sale is valid. Title to the property then vests in the woman, and the husband is entitled to the usufruct. If the wife's possession of the money was not known to the husband, the sale is invalid, because the husband may claim that he transferred such property simply in order to discover the money his wife has concealed from him and not with the intention to convey such property to her.

8. With the money mentioned in the last named instance, other real property is bought and the husband is entitled to the usufruct. If, however, the husband makes a positive claim to the effect that the money in his wife's possession originally belonged to him, he is entitled to the same (Maimonides).

9. If one makes a gift to a woman on the condition that her husband shall have no claim thereto, the condition is invalid and the husband is entitled to the usufruct thereof. If, however, the donor at the time he made the gift to her expressly stated that such gift was given to her for the purpose of being utilized by her for a certain particular object, such as to buy clothes or the like, or he said that she can do therewith whatever she desires without obtaining her husband's consent, her husband has no rights whatever in the premises (Nedarim 18a).

9a. If the father makes a gift to her on condition that the husband shall have no benefit thereto, and afterwards the father died and the daughter is the sole heir of the estate, the husband is entitled to the usufruct thereto (Ramban).

10. If some money or other personal property is found in the possession of a married woman, and she claims that it was given to her as a gift, and he contends that she saved it from her work and consequently belongs to him, her contention prevails; and with such money or personalty, real property must

be bought and the husband is entitled to the usufruct (Maimonides).

11. If, however, in the last named instance, she claims that the property was given her as a gift with the express condition that her husband should have no claim thereto, but that she may do therewith as she pleases, she must come forward with evidence to prove such contention (L. c.)

CHAPTER LXXXVI.

Not to Receive Bailments from Women or Minors.

1. It is forbidden to accept articles for safe-keeping from a married woman, but if one does accept such articles he must return them to her (Baba Bathra 52b).

2. If, however, the woman says before she dies that the articles belong to such and such a man, her statement is accepted as true (Tur).

3. If the woman who has given the bailment went beyond the seas, and her husband came and made a demand upon the bailee that he return the articles to him for the reason that the articles had been stolen from him by his wife, it is the duty of the bailee not to return them to the husband before the woman returns or before she dies (L. c.)

4. If the woman at the time of her death says to

the bailee that the articles belong to such and such a person, if the woman is considered a trustworthy woman in his estimation, he must return the articles to the man designated by her. If she is not trustworthy in the opinion of the bailee, he must return the articles to the husband (L. c.).

5. There is an opinion holding that if the woman takes an active interest in the conduct of her husband's business, her claim made to the effect that the articles belong to a certain person is not accepted as true (L. c.)

6. Nevertheless, even in the last named instance, it is the duty of the bailee to return the bailment to the woman during her lifetime (L. c.)

7. Even if the woman takes no active interest in the conduct of her husband's business, if the bailee returns the bailment to the husband of the bailor, he thereby becomes exempt from liability (Ramo).

8. If a husband borrows money from his wife and thereafter divorces her, she cannot collect from him. A fortiori does this rule of law apply to a case where he has not divorced her (Baba Bathra 51).

9. There is, however, an opinion to the effect that the above stated rule of law applies only to a case where the money he borrowed was concealed from him (he not knowing that she has money), but if the money was not concealed by her from him, he

must repay her the loan, even after he has divorced her.

10. If the woman can prove that money was given to her on condition that the husband shall have no right in it, he must repay her the money.

11. If a woman sell or pawn personal property without the consent of her husband; if the woman takes no active interest in the conduct of her husband's business, and if she does not regularly sell anything that belonged to her husband, the husband can take away the property without returning the money to the buyer.

12. If the buyer says and takes an oath that he did not know that it belonged to the husband, he cannot take away this property from him, even if he wants to return the money to the buyer, claiming that she stole it from him.

13. If the husband seizes the personal property the Court cannot take it away from him.

14. In that case it is doubtful in the law if the husband need to return the money to the buyer or not.

15. If she sells regularly, even knowing that it belonged to the husband, the deal is valid.

16. A and B are partners in business. A sells the business to C, without the consent of B. The deal is valid, but B can claim therefor (Baer Hitie).

CHAPTER LXXXVIII.

The Property a Woman Is Permitted to Take Upon Marital Relations Being Severed.

1. A woman whose bonds of matrimony have been severed either by death or divorce is entitled to obtain possession of her property without having to take an oath, and it is immaterial whether such property was guaranteed by her husband or not (Baba Bathra 42b).

2. The property which was not guaranteed by the husband must be taken by her in whatever state it now is, although it has become much worn out and unfit to accomplish the purpose for which it was made (Baba Bathra 55).

3. Even if the unguaranteed property was entirely lost, the husband is not liable therefor. And if the property advances in value, it inures to her benefit (Ketuboth 55).

4. In accordance with the spirit of the law, in the case of guaranteed property the husband must pay for any kind of deterioration even if the articles involved are still fit to accomplish the purpose for which they were originally intended (Baba Bathra 52).

5. However, the custom now prevalent is that if the articles are still fit for the purpose for which they were originally intended, although they have been

much worn out, she takes them in their present condition. If they are unfit for the purpose they were originally intended the husband must pay the valuation put upon them at the time the marriage took place. And if the articles advance in value, she gets for them according to the valuation put upon them at the time the marriage took place (Tur).

6. The above rules of law refer to cases where it is customary to write in the contract of marriage: "So and so has brought with her upon her marriage such and such an article valued at so much, another article valued at so much," etc. But in the places where it is not customary to specify each article and the value thereof, but it is generally stated that such and such a woman brought with her articles to the valuation of so much and so much, the sum of money thus mentioned becomes a debt for which the husband is liable. Therefore, even if the articles are new at the time the bonds of matrimony are severed, a new valuation thereof must be placed upon them; and if there is any deterioration it must be made good by the husband, and if there is any advance in value, it inures to his benefit, and the first valuation is not considered at all (L. c.)

7. If the woman insists on taking her articles and the husband insists on paying her their value, her contention prevails. The same rule of law applies to the case where she has brought cattle

and they brought forth young, if such cattle were not guaranteed by the husband (Ketuboth 55b).

8. Furthermore, if at the time of her marriage she has brought two vessels which were then valued at one thousand zuz, and for which her husband became personally liable, and when the bonds of matrimony are dissolved the price of such vessels has advanced and they are now valued at two thousand zuz, she takes one vessel for the one thousand zuz she is entitled to, and if she so chooses she has a right to take the other vessel and pay to her husband its present value (one thousand zuz) (Ketuboth 67b).

9. If the vessels are still fit for the purpose for which they were intended, she has no right to insist that her husband shall pay her their value, but she must take such vessels.

10. If the woman at the time of her marriage was possessed of real property, and when the bonds of matrimony were dissolved there were some products of the soil attached thereto, she takes the realty together with such products, although the products are ripe enough to be severed therefrom (Ketuboth 79b).

11. If, however, the husband has severed the products prior to the dissolution of such bonds of matrimony, they belong to him even though they were not then ripe enough to be detached from the soil (Tur).

12. If the husband has expended some money on his wife's property, which was not guaranteed by him, and thereafter has divorced her, whether he realized much of the fruit of such property and ate little thereof, or whether he realized little and ate much thereof, no account is to be had in order to ascertain the amount expended by him and the amount he enjoyed (Kebtuhoth 79b).

13. If, however, he incurred expenditures, but did not enjoy the products of the soil to any extent whatever, an account is to be had, and he is entitled to a return of such expenditures, by taking an oath to corroborate his claim (L. c.)

14. The foregoing rule of law applies likewise to a case where she inherited property from some distant place, and the husband expended some money in bringing over the property, and with the proceeds realized from the sale of such property he brought realty and ate the fruit thereof.

15. If the woman became heiress to property located in a far-off place, and the husband went there to bring the property over and thereby expended large sums of money, and thereafter he divorced her, he takes an oath as to how much he thus expended and recovers the same from her. He cannot, however, recover more than the property has advanced in value by reason of his having brought it over to his own city. This rule of law has applica-

tion also to a case where he has taken some of the property, sold it and used the proceeds thereof, for the reason that he has enjoyed, not the fruit thereof, but the principal itself.

16. The foregoing rules of law apply only to a case where the husband voluntarily divorces his wife. If the woman was rebellious against him, as a result of which he has divorced her, it is immaterial whether he has partaken of the products of the property or not. In either event he takes an oath as to the amount expended by him and recovers the same. If the expenditures exceed the amount the property has advanced in value, he recovers the expenditures, and if the advancement in value is more than the expenditures, he recovers the amount of the advance (Tur).

17. If a man leases his wife's estate to others and thereafter divorces her, if the husband himself was included among the lessees, the lease is terminated by the divorce, because the agreement by them was to be co-extensive with his rights as they looked forward to him. A valuation of the expenditures and of what they realized is then had, and they are at a disadvantage. If, however, the husband himself was not included among the lessees, they looked forward to the property and not to him, and therefore the law applicable to lessees applies to them likewise (Ketuboth 80a).

18. If, however, the lessees had no knowledge that the property thus leased belonged to the woman, they have the rights of the ordinary lessee in any event (Tur).

CHAPTER LXXXIX.

The Duty of a Husband to Provide for His Wife's Funeral Expenditures.

1. If a woman dies during the lifetime of her husband, he is bound to provide her with a grave, and he must pay all other expenditures incidental thereto. He must likewise buy a tombstone to be put on her grave. If it is customary to make a eulogy for the dead, he must do so. In brief he must do whatever is customary to be done in that locality (Ketuboth 46b).

2. If the husband refused to incur the burial expenditures and someone else has done so, the Court collects the expenditures incurred from the husband and turns them over to such person (L. c. 48).

3. If the dead woman's husband went abroad, the Court has a right to sell some of his property for the purpose of burying her, and the Court is not bound to make the announcement of sale generally provided for in cases of sale (L. c.)

4. A widow is not to be provided with burial at the expense of her husband's estate. It is the duty of her heirs, who are entitled to inherit from her the

amount she was to obtain in accordance with the provisions of the contract of marriage to provide her with the burial (L. c. 95).

CHAPTER XC.

The Husband as His Wife's Heir; a Woman Selling Property to Which Her Husband Has Some Rights.

1. A husband is the legal heir of his wife whether to property which was guaranteed by him or not (Ketuboth 46b).

2. He is entitled to inherit only such property of which she was possessed at the time of her death, but not when she only has a potential right to property; as when she was the heir to some property and she died during the lifetime of the one from whom she inherits (Baba Bathra 113a).

3. A man makes a will to the effect that his daughter shall inherit from him a certain amount of money on condition that in the event of her death she leaves living issue. The daughter becomes married, bears a child and dies. After her death the child dies, and after the child's death, her father dies. In such event the husband is entitled to the inheritance of his child (Rabbi Moses Iserlish).

4. If at the time the woman was married someone was indebted to her in a certain sum of money,

and she died before she collected such debt, her husband does not inherit it (L. c.)

5. If, however, a woman makes a loan out of her property which was not guaranteed by her husband, and she dies before collecting the same, her husband inherits the same (Tur).

6. If a woman makes a loan out of property to which her husband has no rights whatever and she dies before collecting such debt, her husband does not inherit it (L. c.)

7. If a man marries a woman forbidden to him by negative command and she dies, he becomes her legal heir, because the betrothal is valid in such cases (Maimonides).

8. If a woman rebels against her husband and she dies, her husband becomes her legal heir (Rabbi Moses Iserlish).

9. If by reason of a vow or any other cause, a man refuses to cohabit with his wife, he is not entitled to inherit her estate after her death (L. c.)

10. If a house falls in upon a man and his wife, and it cannot be ascertained as to which of them died first, if they leave no issue of their marriage, the husband's heirs inherit the entire amount mentioned in the contract of marriage, the woman's heirs inherit her property which was not guaranteed by the husband, and both heirs divide equally among them

the property left by the woman which is guaranteed by the husband (Baba Bathra 158b).

11. If a woman sells some of her property which was not guaranteed by the husband, the husband may recover from the purchasers all the products of such property, but not the property itself (Ketuboth 78b).

12. If the woman dies during the lifetime of her husband, he recovers the property from the purchasers without having to pay anything for it.

13. If, in the last named instance, the money which she has received from the purchasers is still found in her possession, or if she is possessed of money which may be reasonably presumed to be the very money she has received from the purchasers, she must return such money to them (Tur).

14. If the woman becomes a widow or is divorced, the sale becomes valid (Tur).

15. If during the lifetime of the woman the husband wants to build on the property or to destroy some structure found thereon, the purchasers may prevent him from doing so (Nimuke Joseph).

16. If the husband admits that she has sold the property with his consent, or there are witnesses to that effect, the sale is valid and the husband cannot recover the property from the purchasers, because in such an event she is deemed to act for him as his agent (Tur).

17. If the husband was present at the time the sale took place and made no protest, but kept silent, he does not lose his rights thereby (Rabenu Asher).

18. If a woman, at the time of her illness, orders that some of her wearing apparel shall be given away to the poor and the husband consents thereto, he cannot retract. If, however, the apparel was to be given to rich people, he may retract (Rabbi Moses Iserlish; Yebamoth 76b).

19. If a woman, after her marriage, sells or gives away some of her property which was guaranteed by her husband, the conveyance is ineffective, and it is immaterial whether she conveys it to a stranger or to her husband (Yebamoth 76b).

20. There is an opinion that when the woman thereafter becomes a widow or is divorced by her husband the sale becomes valid (Nimuke Joseph).

21. Likewise, if the husband sells his wife's property, whether it is guaranteed by him or not, the sale is invalid (L. c.)

22. A man has no right to either sell or pledge the personal property of his wife, which was guaranteed by him. It is, however, disputed whether the sale of such property by him is valid or not (Maimonides and Tur).

23. The wearing apparel which a woman brings

upon her marriage is treated like unguaranteed property, and therefore if it is sold or pledged by the husband, such sale or pledge is absolutely invalid (Rabbi Moses Iserlish).

24. If in the above stated rule of law the husband claims that he has sold or pledged the property with her consent, or if he claims that he has turned over the proceeds of such sale to his wife, his statement is accepted as true if substantiated by an oath (Rashba).

25. The personal property given to a woman by her husband is treated in law like guaranteed property, which may not be sold by him (vide Section 21, *supra*). This rule of law applies also to personalty bought by him for her, but which has not as yet come into her possession (Maimonides).

26. The husband cannot sell such personalty even if he is unable to support his family, and it is immaterial whether such apparel is worn by her on Sabbaths or on holidays, or whether they are worn by her on week days (Tur).

27. A man is permitted, however, to sell his wife's jewelry given to her by himself, if he needs the money to support his family therewith (L. c.)

28. For the purpose of support, a man is permitted to sell his wife's jewelry or wearing apparel that were given to her by relatives and invest the proceeds and use the interest thereof (L. c.)

29. If the man and his wife sell the unguaranteed property, whether the sale was made first by him and thereafter by his wife, or it was first made by his wife and thereafter by him, the sale is valid (Baba Bathra 90a).

30. If a woman conveys by sale or gift her unguaranteed property to her husband, the conveyance is valid, and she cannot thereafter claim that she has made such conveyance in order to oblige her husband (L. c.)

31. Concerning property other than that mentioned in the foregoing rule of law, the conveyance made to the husband is invalid, because she may claim that she has done so in order to oblige her husband; *e. g.,* guaranteed property, whether realty or personalty, set aside by the husband to be applied for the payment to her of the sum mentioned in the contract of marriage, or realty conveyed to her in the contract of marriage, or realty which she brought of her own (Gittin 55b).

32. If a man says to his wife that she can do whatever she sees fit with her wearing apparel or with her jewelry and she sells them, the sale is invalid, because the permission thus given referred only to a loan or to a bailment, but not to a sale (Rabenu Asher).

CHAPTER XCI.

Release of Debt by Woman.

1. If a woman upon her marriage brings in a debt due her from a certain party on a promissory note, and she releases her debtor after her marriage, the release is ineffective, and therefore her statement is not accepted as true when she claims that the debt has been paid. The same rule of law applies to an oral debt due her (Ketuboth 85b).

2. If real property was collected for her debt, and afterward she married and she died and the husband inherit the property, and the borrower wants to pay the debt and recover the property, this cannot be returned. The same rule of law applies when the woman was indebted to another and collected from her real property, and after the marriage, the husband wants to recover the same.

3. If a widow has a daughter who is engaged, and her mother promises dowry to the bridegroom, and afterward the widow marries and transfers the entire estate to her husband, the bridegroom is entitled to collect the amount promised to him from the estate (Ramo).

4. A gives a field as a gift to an unmarried woman with the condition that she may use same as long as she lives, and after her death the field is to be given over to B, but before the woman died she sold the

field to C or married him and as a result thereof the field is transferred to her husband (C). B cannot recover the field from C.

5. However, if the woman was married to C at the time when the gift was made, then B can recover the field from C (Baba Bathra 137).

6. A woman is indebted in a certain sum and her creditors hold nothing in writing from her. Thereafter she is married and as a result thereof her property is transferred to her husband. Her debtors cannot collect their debt from such property, for the law is well established that for an oral debt the property conveyed by the debtor cannot be recovered (Baba Bathra 139a).

7. If, however, the money she thus borrowed still remains intact in her possession, her husband must return the same to her creditors (Rabbi Moses Iserlish).

8. The creditors of the woman have also a right to prevent such marriage in order not to lose their money thereby, although the time for the payment of such debts has not yet been reached (Beth Joseph).

9. This law is in doubt if the husband has to pay the oral debt or not, therefore, possession is nine points of the law, and if the creditor seized the amount of the debt of the husband, he is not bound to return it.

10. If the creditors of a woman have some legal notice evidencing such indebtedness, they may collect their debts from the dowry she brought to her husband (Baba Bathra 139a).

11. A send presents to B, his intended bride, and thereafter B retracts and becomes the wife of C. A has a right to collect the value of such gifts from the property held by C, because it is considered like a debt which is evidenced by a promissory note (Rabbi Moses Iserlish).

12. Some Sages hold that if a woman brought as dowry personal property, her creditor, even with a promissory note from her, cannot collect from the dowry.

13. If the woman brings something which it is afterward found does not belong to her, it must be returned.

14. Any fine, tax or pardon money the husband is bound to pay for his wife, even if this happened before he had married her.

15. Damages or borrowing not for support, or speculating in buying and selling, and charity promises, even after they married, the husband is not responsible for same because if the husband be bound to pay such debts, she could, after having a quarrel with him, run into debt and make him pay for same in revenge.

16. If the woman borrows money for support, the husband is responsible to pay.

CHAPTER XCII.

Husband's Release of Usufruct and Inheritance.

1. If a man, either in writing or verbally, relinquishes his right to the property of his intended bride, such release is valid.

2. The bride may thereafter sell or make a gift of the said property, and such sale or gift is valid (Ketuboth 83a).

3. If no sale has been made, the husband is entitled to the usufruct of the property, and if she dies he inherits her estate.

4. If a husband makes an agreement with his wife to the effect that he shall not inherit her estate, his agreement is invalid (L. c.)

CHAPTER XCIII.

A Widow's Right to Support.

1. The amount mentioned in a marriage contract is equivalent to a debt which has not yet become due, and cannot be collected in the husband's lifetime unless he has obtained a divorce (Rabbi Moses Iserlish).

2. A widow is entitled to support out of the es-

tate belonging to her husband during her widowhood, although nothing to that effect has been mentioned in the contract of marriage (Ketuboth 83a).

3. Even if the husband at the time of his death has said that his widow shall not be supported out of his estate, such provision has no effect, and the heirs cannot force her to accept the amount mentioned in her contract of marriage in order not to be bound to support her. The heirs are bound to support the widow as long as she makes no demand to obtain payment on the contract of marriage.

4. Where a man dies leaving a widow and a daughter surviving, either from her or from a former wife, and the estate is not sufficient to support both, the widow is entitled to preference, and the daughter must, if necessary, seek charity (Baba Bathra 140).

5 It is held by other authorities, however, that the estate, whether large or small, is to go to the support of both equally until the estate is exhausted.

6. If, however, the daughter marries and the estate has gone to her husband, it is the duty of the husband to support the widow (Tur).

7. If, however, at the time of the marriage the husband made an agreement with his wife that she shall receive no support from his estate during her widowhood, or if it is the custom of the locality that

a widow is not entitled to support, the heirs are not compelled to support her (Maimonides).

8. The Court may rule that the widow is not entitled to support from the estate.

9. If a widow demands the sum provided for her in the marriage contract by legal action, she is not entitled to support (Ketuboth 54a).

10. But if she makes a demand without going to Court, she does not thereby lose her right to support (Tur).

11. There is an opinion, however, that a woman does not lose her right to support by demanding her rights under the contract of marriage through Court, if she was forced to do so, as when the heirs refuse to support her, or when the heirs deceive her by making false representations to her to the effect that a certain man is willing to marry her, and as a result thereof she demanded her rights under the marriage contract, or the like (L. c.)

12. If marriage proposals are made to a widow and she accepts such proposals, she does not thereby lose her right to support (L. c.)

13. If a widow is engaged to be married, she loses her rights of support.

14. If a widow commits an adulterous act, she does not lose her right to support thereby (L. c.)

15. If a woman releases her husband from the payment to her of the amount mentioned in her contract of marriage, she thereby loses her right to support during her widowhood. It is disputed whether or not in such an event she loses her right to support during his lifetime (Ketuboth 54b; Rabenu Asher and Rambam).

16. If a widow releases the heirs from the payment of the amount mentioned in the contract of marriage she likewise loses thereby her right to support from her husband's estate (Beth Joseph).

17. The foregoing rules of law refer only to a case where she has released her husband or the heirs from the entire amount mentioned in the contract of marriage, but if she has left some amount to herself unreleased, she is entitled to support (Ketuboth 97b).

18. In such an event, however, the heirs have a right to pay the amount left by her unreleased, and thereby not be bound to support her (Rabenu Asher).

19. If a woman gives a release either to her husband or to the heirs, or sells her rights, without specifying the sum of money for which she sells or for which she releases her rights, it is construed in law that she has thereby released or sold the entire amount mentioned in her contract of marriage (Maimonides).

20. If the estate left by her husband is valued, say, at one thousand dollars, and the amount the widow is entitled to obtain under her contract of marriage is, say, four hundred dollars, she has a right to demand that six hundred dollars be expended on her support, and when that sum has been expended, she has a right to demand that the balance of four hundred dollars be given to her in accordance with her rights under the marriage contract (L. c.)

21. If a widow who is poor has not demanded her support for a period of two years, and if a widow who is rich has not demanded her support for three years, it is construed in law as a release, and therefore they lose their right of support for the years past (Ketuboth 97a).

22. If the widow has waited even one day less than the period mentioned in the foregoing rule of law, or if she had a pledge in her possession to secure her support, or if she has borrowed for her support in the meantime, it is not considered as a release of her right to support (Tur).

23. If a widow demands support from the heirs, and they claim that they have given it to her, and she claims that she has not received it, if this controversy takes place while the widow is yet unmarried, the burden of proof is upon the heirs to prove their contention. They must, therefore, produce evidence to prove that they have given her support as con-

tended by them. If they fail to do so, the widow takes a rabbinical oath to the effect that she has not yet receive her support, and is entitled to a recovery. If, however, this controversy takes place when she is married to someone else, the burden of proof lies upon her, and she must come forward with evidence to prove that she has not received it. If she fails to do so, the heirs take an oath to the effect that they have paid her, and they are absolved from liability (Maimonides).

24. If a man and his wife go beyond the seas and the woman returns therefrom saying that her husband has died there, her statement is accepted as true. She, therefore, has a choice: She may either demand support from her husband's estate, or she may demand the payment of the amount of money mentioned in the contract of marriage. If, however, she says that her husband has divorced her, her statement is not accepted as true, and she is entitled to be supported only to a sum not exceeding the amount mentioned in the contract of marriage (Ketuboth 117b).

25. A widow is to be supported only out of the real property which is free from encumbrance, but not out of realty which is either mortgaged or otherwise encumbered (Gittin 48b).

26. If the husband has sold or given away his real property during his lifetime, or even if the heirs

have sold, pledged, or given away such realty, the property is not taken out of the possession of the vendee or the donee in order to support the widow (Ketuboth 89a).

27. This, however, is only true when the husband has given the property when in sound health, but if he has given it away when stricken with illness, she is entitled to receive her support from such property, if there is no other property left which is not encumbered (Baba Bathra 133a).

28. The widow is not entitled to receive support out of personal property, even when such is free from all encumbrance (Ketuboth 69b).

29. If, however, she seizes personal property left by her husband, even if such seizure takes place after his death, the heirs cannot recover the same (Ketuboth 96a).

30. Now, since the Goanim have enacted that a widow may collect the amount provided for her in the marriage contract out of her husband's personal property, a widow is entitled to be supported out of such property, even when she does not seize the same (Maimonides).

31. If the husband has made a gift of the personal property, the widow cannot recover said property for the purpose of obtaining support therefrom.

32. If the widow fail to seize the personal prop-

erty left by her husband, the heirs may take such property into their possession and pay for her support. She cannot prevent such taking possession and insist that the Court take possession thereof for fear that it may be lost while in their custody and thus lose her means of support. Even in the event that her husband has expressly stated that she shall receive her support out of the personalty in question, she cannot prevent the heirs taking possession thereof (L. c.)

33. In that event, the widow may, however, prevent the heirs from selling the real property left by her husband; but if the property has already been sold, the sale is valid (L. c.)

34. If a man leaves several wives (referring to the time when polygamy was permitted), there is no priority, and all are equally entitled to support.

35. If a widow sell real property for her support, she cannot thereafter claim the amount to which she was entitled in her contract of marriage from the property she sold (Ketuboth 97a).

36. When a certain sum of money is given a widow or any other woman entitled to support, it must not be less than a sum sufficient for her support at least for thirty days, in order that she may not be embarrassed and disgraced by having to come to demand her support from Court every day (L. c.)

CHAPTER XCIV.

A Widow's Right to a Dwelling and Wearing Apparel.

1. Just as a widow is entitled to support out of the estate belonging to her husband, thus is she entitled to a dwelling, wearing apparel and all other necessaries, or she may live in the same house in which she has lived during the lifetime of her husband (Ketuboth 103a).

2. The heirs must furnish a separate dwelling, according to her station in life, and they cannot compel her to reside with them (Rabbi Moses Iserlish).

3. However she is not permitted to rent the premises to another. A sale of her dwelling by the heirs is invalid.

3a. There is an opinion that the heirs may hire for her a dwelling other than the one she lived in during her husband's lifetime (L. c.)

4. A widow is entitled to as many servants and other luxuries as the husband provided for her whenever he goes away on any long journey (Ketuboth 103a).

5. If the dwelling collapses, the heirs are not bound to rebuild it.

6. Even the widow is not permitted to expend her own money in rebuilding the house. She has lost

her right to the dwelling, and cannot regain it, even if the heirs rebuild it. If the house is only slightly damaged the widow is not permitted to repair the house, but she must inhabit it in its damaged condition or remove. The heirs must hire for her a dwelling (L. c.)

7. If a widow says to the heirs that she wants to live with her own parents and not with them, and demands that a sum of money be fixed by them for her support, the heirs may say to her: "If you are willing to live together with us, we are ready to support you, but if you insist on living with your parents, we will give only as much as it would cost us if you had stayed with us" (L. c.)

8. If the widow be a young woman and any of the heirs are adult males, who are not her children, she may decline to reside together with them for moral reasons.

9. The heirs are bound to pay the personal and all other taxes her husband was accustomed to pay for her (Tur).

10. They are not compelled to provide bail or ransom for her, nor medical treatment, when the cost of such treatment is a fixed price; nor are they bound to provide her with a grave or other burial expenses (L. c.)

CHAPTER XCV.

The Earnings of a Widow; Her Right to Advancement of Property.

1. Since the heirs are bound by law to support a widow, they are entitled to obtain from her all her earnings (Ketuboth 95b).

2. If the heirs say to her: "Keep your earnings for yourself and we will not support you," they are not listened to (Maimonides).

3. The widow may, however, say to the heirs: "I do not want to be supported by you and I will keep my earnings for myself." If she was nursing a child, she may demand compensation from them (Yerushalmi Ketuboth).

4. All services a woman is bound to render to her husband a widow is bound to render to the heirs, except filling up the cup, making the bed ready and washing the face, hands and feet (Ketuboth 96a).

5. Whatever a widow finds and the products of her real property belong to her. If she saved of her earnings or from the food or from the cloth, it belongs to the heirs (L. c.)

CHAPTER XCVI.

Oath of a Divorcee and a Widow.

1. A widow cannot collect any part of the sum

mentioned in the contract of marriage without taking the oath prescribed by law (Ketuboth 95b).

2. The property which she has brought upon her marriage, whether guaranteed by the husband or not, and the property set aside by the husband and specifically mentioned in the contract of marriage, she may recover without an oath, provided that such property is still intact or there exists something which directly came from such property (Ketuboth 55a).

3. If a widow dies before the taking of the prescribed oath, her heirs are not entitled to the sum mentioned in the contract of marriage, because no heirs can inherit a thing or property which can be collected only by taking an oath (Shebuoth 48a).

4. A widow must take an oath to the effect that her husband has not given money to her, and she has seized nothing belonging to him (Tur).

5. There is also an opinion that she must swear that she has not sold her rights of the contract to her husband and that she has not released him from liability (Maimonides).

6. If the woman claims that she was married when she was a maiden and consequently she is entitled to two hundred zuz, and the husband or the heirs claim that she was married when a widow, and therefore she is entitled to only one hundred zuz, and

the marriage contract was lost, if there are witnesses who can testify that the husband has made the wedding as is customary in the case of maidens, she is entitled to get two hundred zuz. If there are no such witnesses, she is entitled to only one hundred zuz, but the husband or the heirs must take an oath to corroborate his contention.

7. A man dies leaving four women, A, B, C and D (referring to the time when polygamy as permitted), all of whom are entitled to certain sums of money in their contracts of marriage. A was entitled to one hundred zuz, B to two hundred, C to three hundred and D to four hundred, and all signed in one day. The estate was not sufficient for all, for instance, the estate is only five hundred dollars. Divide the amount of five hundred dollars in ten parts. each part being fifty dollars. A is entitled to one part, B to two parts, C to three parts and D to four parts, the total being $500. Other Sages hold that each of the four women should receive one hundred dollars and the remaining one hundred dollars should be divided equally between the last three. And if the estate is only $300, then each of the four must get an equal share, etc.

CHAPTER XCVIII.

When a Woman Is Released from Taking Oath.

1. If a husband during his lifetime releases his

wife from taking an oath, she may collect the amount mentioned in the contract of marriage without taking the prescribed oath. Such release, however, does not have any effect in so far as the woman's heirs are concerned. If, therefore, the woman's heirs seek to collect the amount of the marriage contract, the husband or his heirs may impose an oath upon them (Ketuboth 86b).

2. The husband may likewise release his wife's heirs from taking the oath prescribed by law (L. c.)

CHAPTER XCIX.

A Widow's Wearing Apparel.

1. If a widow seeks to collect the amount of the contract of marriage, all her wearing apparel is to be valued and deducted from such amount, and it is immaterial whether such apparel is worn by her on week days or on the Sabbath (Ketuboth 54).

2. If a divorcee, who was divorced by her husband without justification (referring to the time when divorce was permitted by force), seeks to recover the amount mentioned in the contract of marriage, the apparel worn by her on week days is not to be valued for the purpose of deducting their value, but the apparel worn by her on festivals or on the Sabbath are to be valued (Maimonides).

3. In the last named event, she cannot be compelled to give her apparel and receive their value in-

stead, but she has the right to retain it for the amount at which it was valued (Beth Joseph).

4. If one makes a gift to his wife, such gift belongs to her even if he thereafter divorce her or she becomes a widow (Tur).

CHAPTER C.

When Marriage Contract Is Collectible.

1. Nowadays, since a provision to that effect is embodied in the contract of marriage, the amount mentioned therein may be collected even from the apparel worn by the husband.

CHAPTER CI.

How Long the Contract Is Collectible.

1. A widow who is in possession of her contract of marriage can collect the same for life, whether she receives her support at her husband's house or not, even after she marries (Ketuboth 104a).

2. If the marriage contract is not in her hand and she comes to collect without that contract, then it is customary to pay the widow's money without writing. She is entitled to collect only until 25 years, not more. If she is silent longer than that time, she loses the right to collect.

3. If she claims the money within the 25 years, and after that she was again silent, the time is reckoned 25 years from the time of the claim.

4. If a widow receives her support from the heirs of her husband, they deliver it at her father's house, and she is silent for her money of the contract of marriage, she does not lose her right. She may be silent out of respect for the heirs.

5. A divorcee even after 25 years can collect the contract of marriage.

CHAPTER CII.

The Collection of a Debt and Marriage Contract.

1. A man dies leaving a widow and a creditor, and leaves realty sufficient only to pay either the widow or the creditor. If the marriage contract was executed prior to the contracting of the debt the widow has priority. If the debt was contracted before the execution of the marriage contract, the creditor has priority. Even if the latter seized it, it can be taken from him.

2. This law of priority does not apply to personal property (Ketuboth 93b).

CHAPTER CIII.

The Right of a Widow to Sell Property.

1. A widow may sell her husband's property for the purpose of collecting the amount mentioned in the contract of marriage without the presence of the Court and without the necessary proclamation gen-

erally required in the case property is sold to satisfy debts. Such sale must, however, take place in the presence of three men who are known to be trustworthy and can qualify as experts in the valuation of real property (Ketuboth 97a).

2. The heirs are become personal guarantors of the sale made for the purpose of collecting the contract of marriage, no matter whether such sale was made by the widow herself or through the Court.

3. A divorced woman cannot sell her husband's property herself, but she must do so in the presence of a competent court of justice. Even a widow who has again married is not permitted to sell property for the satisfaction of her widowhood, unless in the presence of a competent court of law (Ketuboth 96b).

4. If the marriage contract of the widow amounted to $200 and she sold real property valued at $100 and received $200, or if the property was valued at $200 and she received $100, she cannot demand more from the heirs.

5. If the widow has a marriage contract for 100 zuz and she sells real property for 101 zuz, even if she wants to make good the 1 zuz to the heirs from her pocket, the deal is void.

6. If the widow has a marriage contract for 400 zuz and she sold real property to one man for 100 zuz and to another for 100 zuz, and to the third for

100 zuz, and to the fourth for 101 zuz, the deal with the fourth is void. The other three are valid.

CHAPTER CV.

Selling or Releasing Contract of Marriage.

1. A woman may sell or give away her contract of marriage or any part thereof, and the buyer or the donee is entitled to the same rights as the woman. If the woman becomes a widow or a divorcee, the buyer or the donee is entitled to the amount mentioned in the contract of marriage, and if she dies during the lifetime of her husband, they are not entitled to anything (Ketuboth 97a).

2. If a woman releases the husband from the amount mentioned in the contract of marriage, it is valid without any symbolic agreement and without any witnesses, providing it is certain that it was done in sincerity and not jocularly only (Maimonides).

3. If the woman is forced to release the contract of marriage, as when her husband has constantly been quarreling with her, and she gives a release in order that he might live in peace with her, such release is invalid, although she makes no protest at the time of the release (Rashba).

4. A sells a promissory note to B, which he holds from C. If A thereafter releases C from liability, such release is valid. Even if the heirs of A release

C, the release is valid. Therefore, if a woman sells her contract of marriage to someone else and thereafter her husband dies and then she dies, her son can release the heirs from liability and thus make the sale void. This rule of law holds true, even in case the son is the only heir left by her, and consequently he can release himself from liability in order to make the sale void and not have to pay the amount mentioned in the contract of marriage (Ketuboth 85a).

5. A man sells his mother's marriage contract during the lifetime of his father with a provision that if his father should die first and then his mother, the buyer should receive the sum of money mentioned in the contract of marriage. If he imposed a condition on the sale to the effect that if his mother should object to the sale, then the sale should be declared null and void; and if his mother has died without having made any objection, he cannot then say that he is substituted in his mother's stead, and thereafter he may in her stead object, because such objection was not guaranteed by himself (Ketuboth 91b).

CHAPTER CVI.

One Bequeathing His Property to His Children.

1. If a man transfers his property to his children, whether male or female, no matter in what state of health the man is, and conveys to his wife some realty of any nature, the wife loses her right to

the amount mentioned in the contract of marriage, if she kept silent and made no protest at the time the facts were disclosed to her of this property, and if he bought property afterward, she can collect from it (Peah III, 7).

CHAPTER CVII.

One Transferring All His Property to His Wife.

1. If a man transfers all his property to his wife, no matter in what state of health he is, although a symbolic agreement has been made by him to that effect, she is only considered as a mere trustee or guardian of his heirs. This rule of law applies to a case where his heirs consist of children born to him by the present wife, or of heirs born to him by his former wife, or even of his brothers, or any other legal heirs. If, however, he leaves to his heirs real or personal property of any value whatsoever, she acquires title to all the property thus conveyed to her and she does not lose her right of the marriage contract (Baba Bathra 131b).

2. In that event, if it was written all his estate to a divorced wife, she is entitled to it.

3. If a man says, "My first daughter shall take $50 and my second daughter $50," and the visitors ask him, "What will you do for your wife," he says, "The balance belongs to her." That is effective, because he has already given something to his children.

4. A woman who acquires all the property of her husband as an absolute gift thereby loses her right to the amount mentioned in the contract of marriage. If, therefore, a creditor produces a promissory note which fell due prior to such transfer, and all her husband's property was taken by the creditor to satisfy such debt, she is not entitled to anything whatsoever (L. c. 132b).

CHAPTER CVIII.

The Bequest of a Sick Person That His Wife Should Get As Her Share As Much As One of His Children.

1. If a sick person says that his wife shall take a share out of his estate equal to the share taken by any of his children, she is entitled to share with them in addition to the amount she is to get according to her marriage contract (Baba Bathra 128a).

2. If, in such event, children were born to him after the will was made, such children are to be included in the bequest, and the wife is to get a share equal to that of any of the children (L. c.)

3. For instance, if he had three children at the time the will was made and thereafter two more children were born to him, the wife takes a share equal to that of any of the five children, which is one-sixth of the estate (Baba Bathra 128b).

4. In the foregoing event she is entitled to a share

of the property her husband was possessed of at the time the will was made, but if her husband had acquired property after the will was made, she is not entitled to any share therefrom, as no man can convey property which was not as yet in his possession (L. c.)

5. If it is doubtful whether the property in question was owned by her husband at the time the will was made, the wife must produce evidence to prove that he was then possessed thereof, otherwise she does not get any share therefrom (Tur).

6. If all the children have died, she is entitled to a share of the estate as any of the children would have been entitled to in case they had survived their father, and the balance goes to his heirs.

7. If, after this will was made, the number of children is diminished, she takes her share according to the number living when the father died. Other Sages are in doubt as to this law.

CHAPTER CIX.

A Sick Person Bequeathing Money to His Wife.

1. If a sick person says: "Give two hundred zuz to my wife, which is due her," she is entitled to the sum of two hundred zuz in addition to the sum mentioned in the contract of marriage. If, however, the sick person has said: "Give two hundred zuz to my

wife for her rights under her contract of mariage," she is not entitled to both sums (*i. e.,* to the two hundred zuz and likewise to the sum provided for her in her contract of marriage), but the wife has a right to choose; if the two hundred zuz exceed the sum mentioned in her marriage contract, she can take the former, and if the latter exceed that of the former she takes the latter (Baba Bathra 138a).

2. It is disputed whether the woman is entitled to the right of choice as mentioned in the foregoing rule of law in the event that her husband bequeathed for her a certain sum of money, without specifying for what the money is to be given to her. Some authorities hold that she may exercise such of election, while others are of the opinion that such sum is to be considered as a gift, and, therefore, she is entitled to such sum without her rights to the contract of marriage being impaired (Tur).

3. If in the last named event he expressly said that such sum of money is to be a gift to her, all agree that she is entitled to it in addition to her marriage contract (Rivosh).

4. If a sick person says that his wife shall keep her clothes, she is entitled to keep all her clothes, whether she wears them on week days or on the Sabbath (Tur).

5. If a man says that his wife shall keep all her wearing apparel, she is likewise entitled to her

shawls, etc., for everything which a woman wears, or wraps herself in. is included in the term wearing apparel (L. c.)

CHAPTER CX.

Laws Concerning the Release of a Woman.

1. It is permitted to write a release for a woman even when her husband is not present, providing, however, the woman is identified by the one who is to execute such release. The husband is bound to pay for the execution of such release (Baba Bathra 166a).

2. If one finds a release executed by a woman to the effect that her marriage contract was paid by her husband, if the woman admits that she has given such release to her husband, it must be restored to the husband. If, however, she claims that she has never given it to her husband and that she herself has lost it, such release is turned over neither to the woman nor to her husband, and she can collect on the marriage contract (Baba Meziah 19a).

CHAPTER CXI.

Laws Concerning Marriage Contract Providing for Male Children.

1. If it is provided in the contract of marriage that the wife's male children shall inherit her rights, then such male children inherit from their mother the sum provided for her in the contract of mar-

riage, and also the dowry which she has brought upon her marriage and which was guaranteed by him. The balance of his estate is to be divided equally among all the heirs; *e. g.,* A marries a woman B, whose marriage contract and dowry amount to the sum of one thousand zuz. B gives birth to a son C, and B dies during his lifetime. Thereafter A marries D and she gives birth to a son E. D's contract of marriage and dowry amount to the sum of two hundred zuz. Thereupon D dies during A's lifetime, and thereafter A dies leaving the sum of two thousand zuz. In such event C is entitled to the one thousand zuz mentioned in his mother's contract of marriage, and E is entitled to the two hundred zuz mentioned in his mother's contract of marriage, and the balance of the estate is divided equally between C and E. As a result C's total inheritance amounts to one thousand four hundred zuz, and E's inheritance amounts to six hundred zuz (Ketuboth 52b).

2. A provision in a marriage contract to the effect that the male children of a woman shall inherit her is valid and effective only when, after the division of the inheritance as provided, there will be a residue of the estate at least amounting to one denari, which will be equally divided among such heirs. If there is no residue of the estate amounting to the value of one denari, the provision in the marriage contract is void, and the heirs inherit equally from their father's estate. For, should the provision in such case take

effect it would tend to nullify the law laid down in the Torah to the effect that heirs are entitled to equal shares of their father's inheritance (L. c.)

3. The residue as required above must be in existence and not in expectancy. If, at the time of the father's death there was no such residue, but there was an expectancy to inherit an estate in the future from their grandfather, it is not in law considered as a residue. Even in the event their grandfather has died before the inheritance was distributed, it is of no effect, as long as there was no residue to the amount of one denari at the time of his death (Ketuboth 52b).

CHAPTER CXII.

Laws Concerning the Support of Female Children Out of Decedent's Estate.

1. Pursuant to the provisions embodied in the contract of marriage, female children are entitled to be supported out of their father's estate, after his death, until they either become betrothed or until they become of age (twelve years and one day) (L. c.)

2. When the female child is supported out of the estate of her father, who has died, whatever she earns and whatever she finds belongs to her and not to the estate (Ketuboth 43a).

3. If a female minor child, who is entitled to be supported out of her father's estate, is married and

thereafter becomes a widow or is divorced while still in her minority, she is entitled to such support until she becomes of age or until she is again betrothed (Ketuboth 43b).

3a. Other opinions hold that she loses the support (Ramo).

4. As in the case of a widow, a daughter is entitled to food, wearing apparel and a residence to be provided for her out of the estate belonging to her father (Maimonides and Yerushalmi).

5. For the purpose of supporting and clothing a female child the estate of her father may be sold without proclamation (Ketuboth 87a).

6. As has been stated, the manner of support in the case of a widow is to be determined by the widow's station in life as well as by that of her husband's. In the case of a female child, however, her station of life is not taken into consideration at all, but she is provided with necessaries only (Yerushalmi).

6a. Now, since it is a custom that a contract of marriage is collectible even out of personal property, female children are likewise to be supported out of their father's personalty (Tur).

7. Female children are to be supported out of unencumbered property, but not out of property which has been sold or given. For instance, if the father, during his lifetime and while of sound body, has

either sold or gifted his property, or if his sons, after his death, have either sold or given away his property, or even if they only have pledged it, the female children are not entitled to receive support therefrom (Ketuboth 101b).

8. Female children cannot be supported from sold property, even if a form of agreement was made at the time of writing the marriage contract. Even if the female was born at the time of agreement, for instance, he divorced his wife and she have female children at that time and afterward he re-marry his wife again.

9. Other Sages hold that if a form of agreement was made after the marriage, for the support of the females, it is valid.

10. If a man agrees with his wife that his female children shall be supported out of his estate, even after they have become of age, such children are entitled to support even from property which is encumbered (Tur).

11. If a man at the time of his death expresses it as his will that his female children shall not be supported out of his property, his words are of no effect (L. c.)

12. If, however, at the time of his marriage he made an oral agreement with his wife that their female children shall not be entitled to support out

of his property the agreement is valid. For it is well established that in pecuniary matters a man may make conditions in a contract which are contrary to law (Tur).

13. If a man dies leaving sons and daughters, the sons are entitled to inherit all the property and they must support their sisters out of the estate until they become of age or until they are betrothed (Baba Bathra 139a).

14. It is not the duty of the sons in such a case to economize in their expenses, but they may spend out of the estate as much as they desire. Nevertheless, if, in the opinion of the Court, the sons are squandering the estate, it is the duty of the Court to act for the daughters and to set aside property sufficient for their support (Tur).

15. The foregoing rules of law have application only to a case where the property is sufficient to support both the sons and the daughters until they become of age. If the estate does not suffice for the purposes mentioned, then the Court must set aside property sufficient for the support of the daughters until they become of age, and the balance is given to the sons (L. c.)

16. If the father left personal property, even if the fund is insufficient by real, they must both be supported.

17. If the fund was sufficient at the time of the father's death, and it diminished after the father's death, then it is placed under the law for sufficient funds.

18. If, however, at the time of the father's death it was insufficient and afterward is sufficient, the sons take the balance.

19. Even of insufficient funds, if the sons sold the estate before the Court take action of them, the deal is valid.

20. If the property is sufficient to support all the children, but there are certain obligations to be paid, such as the payment of a debt, etc., and if such payment be made the property will not suffice for the support of all, the estate is nevertheless treated in law as if it were sufficient for all heirs (Tur).

21. If, however, the marriage contract must be paid and such payment will render the estate insufficient, the estate is treated in law as an insufficient estate for the support of the widow. Is two opinions if it is tendered the estate insufficient or not (Baba Bathra 140a).

22. If a man leaves a widow and a daughter, either by the widow or by another woman, and the estate left by him is sufficient only to support one of them, some authorities are of the opinion that the widow has priority, while other disagree, and both

supported until the fund is finished (Baba Bathra 139; see Chap. 93).

23. The right of female children to receive support from their father's estate has preference over the right of the male children to inherit their mother's rights under her marriage contract (Maimonides).

24. If a man dies leaving no sons but daughters of various ages, the estate is to be divided equally among them, and do not say that the small children are entitled to support until they become of age (Baba Bathra 139a).

CHAPTER CXIII.

Wherefrom the Tenth of the Property is to be Collected.

1. If a man dies leaving a daughter, it is to be ascertained how much the man would be willing to give his daughter for her dowry, and this sum is given to her. Such ascertainment is made by either inquiring of his friends, or by considering his business and station of life, or, if he gave dowry to another daughter, by inquiring how much he had given to such daughter. If it is impossible to draw any conclusion therefrom, one-tenth of the estate is given her as her dowry (Maimonides).

2. In the distribution of the mother's estate there

is a dispute as to whether the daughter takes a tenth or not.

3. Although the Goanum have enacted that the wife may collect the amount of the marriage contract from the personal property of the husband, the daughter, however, can collect her tenth only from the real property or its rents (Baba Bathra 69a).

4. If a man leaves several daughters, whoever is married first takes one-tenth of the entire estate. The next one who marries takes one-tenth of whatever the first has left, and the next one who marries takes one-tenth of whatever the second one has left, etc.

5. If all the daughters get married at one and the same time, the first takes one-tenth of the estate, the second takes one-tenth of what is left, the third then takes one-tenth of the remainder, etc., and then the three sums are added together and divided equally among all the daughters (Ketuboth 68b).

6. Even if the tenth cannot be collected till the daughters get married, the Court must take action to determine the property for that purpose.

7. If the brothers sell the property the daughter can take away the property for the expenditure of their dowry. The daughter must take an oath that she did not receive other dowry.

8. If one dies leaving a widow and a daughter, the latter is not entitled to the one-tenth prescribed by

law, for the reason that the widow's right to support has priority. Even in the event the daughter has died after her marriage, the husband is not entitled to inherit the one-tenth that must be given her as her dowry, because the entire estate is in the possession of the widow in order that she may receive her support therefrom (Baba Bathra 139a).

9. A minor orphan, who was married with her consent, and that of her mother or her older brother, and was given a certain sum of money as her dowry, may thereafter demand the dowry provided for her by law, when she becomes of age (Ketuboth 68a; see Chap. 113, Sec. 1).

9a. If the daughter was married when she was of age and she was silent in the demand of the dowry provided for her by law; if she received support from her brothers, then she has not lost her right. If the brothers cease to support her and then she was silent on demanding her dowry, she loses her right to the dowry.

10. If a man dies leaving two daughters and one son, and one of the daughters collects her one-tenth of the estate as her dowry and the other daughter failed to collect her one-tenth before the son died, and the daughters are entitled to the entire estate. In such event the second daughter is not entitled to receive her one-tenth out of the estate. The entire estate is to be divided equally between the daughters,

and the first one is not bound to restore the one-tenth she has already received (Ketuboth 69a).

11. Some authorities, however, hold that in such a case the second daughter is entitled to her one-tenth of the estate first and then the estate is divided equally among the two daughters (Tur).

12. The law providing for a daughter as her dowry one-tenth of the estate applies to a case where sons are left by the deceased. If there are left daughters only, the estate is to be divided equally among them. Even if the older daughters were married during their father's lifetime, the younger daughters cannot claim that they, too, ought to get their dowry from the estate, but the estate is to be divided equally among them. If, however, the older daughters married after their father's death and received their dowry from the estate, the younger daughters are likewise to receive their dowry first and then the estate is divided equally among all the daughters (Baba Bathra 139a).

13. If a man commands on his death-bed that his daughter shall not receive a dowry from his estate, that is effective (Ketuboth 68).

14. If, however, he makes a condition at the time of her marriage that his daughter shall not receive a dowry on her wedding, that is not effective (L. c.)

CHAPTER CXIV.

Laws Concerning Agreement of a Man to Support His Wife's Daughter or the Daughter of a Stranger.

1. If a man marries a woman and obligates himself to support her daughter for a period of five years, not specifying when the period is to commence, he is bound to provide such daughter with food and drink for five years next following his marriage, and it is immaterial whether the cost of living is high or low (Ketuboth 101b).

2. If he failed to support her during the five years above prescribed, and thereafter the cost of support became low, he is bound to pay for her support at the price when the cost of living was high. If, however, the daughter refused to accept the support within the time mentioned, he may give her the price of her support when the cost of living is low (Tur).

3. If, however, the cost of living during the five years was low and then it became high, even if he neglected to provide for her, he must pay for her support when the cost of living was low (L. c.)

4. During the time he supports her, her earnings belong to her (L. c.)

5. If her mother released her husband from the obligation of supporting her daughter, the release is of no offect (L. c.)

6. If the husband dies during the period, his heirs are bound to support her.

7. The duty to support is like an ordinary debt, and she may collect such support out of property which is sold or in any other way encumbered by him (Mishnah).

8. The foregoing rule of law applies only to a case where a symbolic agreement was made by him to the effect that he would support the daughter, or in a case where he obligated himself to support by executing an agreement to that effect, but not otherwise, cannot collect from sold property, only from free property (Tur).

9. If the daughter has a servant he is also bound to support the servant (Taz).

10. If the daughter dies during the period she is entitled to receive her support, such right cannot be inherited by her heirs (Tur).

11. If the daughter becomes sick during such time, her stepfather must give only the same support as when she was in good health (L. c.)

12. If the mother was divorced during the time her husband obligated himself to support her daughter, he must send support to the daughter to the place wherever her mother is to be found, in the same manner as one of his own family (Maimonides).

13. If a man engaged his daughter and later the bridegroom and the father desires to break the engagement, this cannot be done without the consent of the daughter.

14. If he gives board in his house at his table, he must provide with meals provided to the members of his family (L. c.)

15. In any event, however, the stepfather is not bound to provide her with medical treatment (L. c.)

16. If the woman whose daughter her husband obligated himself to support, was divorced and married again, and such other husband likewise obligated himself to support her daughter, in such event one must give support and the other must pay her for such support she was to receive from him, and the daughter can choose who will pay and who will give support (Ketuboth 102a).

17. If the woman was also divorced by her second husband, both husbands are bound to support her daughter for the period undertaken by them. If each one insists upon providing her with food and paying her for the same, the daughter has the right to choose with whom she would prefer to board.

18. If the daughter is mentally incapable of choosing, she is to receive her board by turns, one week from one stepfather and the other paying her for the same, the other week from the other step-

father and the former paying her cash for the same (Ketuboth 102a; Yur).

19. If the daughter is married during the time she has to receive her support from her two stepfathers, her husband must support her, and the two stepfathers must pay her cash in lieu of board (L. c.)

20. If the man writes in the contract to the effect that he obligates himself to support her daughter as long as she stays with him, he is not obligated to support such daughter in the event of her mother's death, or in the event of her being divorced (L. c.)

21. The last stated rule of law applies likewise to a case where he divorces her and subsequently remarries her (Tur).

22. If a man of his own volition obligates himself to provide some one with support, not being required by law to do so, he is not thereby bound to provide such person with wearing apparel, unless he expressly so stated in the agreement (Rashba).

22a. If a man obligates himself to support his son and his daughter-in-law for a certain length of time after the marriage, and in the meantime the son dies, there is a difference of opinion as to whether the daughter-in-law is entitled to be supported until the time expires.

23. A obligates himself to support B for a period of two years if he married the daughter of a certain

man and the daughter dies during the period entitled to receive her support, A is free of his obligation to the daughter's heirs (Rashba).

24. If a man obligates himself in writing to give a certain sum of money for his support, in a certain time, if he marries the daughter of a certain man, he is bound to do so even in the event the daughter dies. The reason for this rule of law is that he has not obligated himself to support him for a certain length of time, but has obligated himself to pay a definite sum for his support, and if the man desired he could have insisted upon him paying the entire sum at one and the same time. If, however, the sum thus given was given for him and his wife's support, the man is entitled to his share only and does not inherit his wife's share (Rashba).

25. If a man marries a woman and she makes an oral agreement with him that he must give the expense of the marriage to her daughter, and afterwards he dies, the heirs must fulfill the obligation, even though the mother collect her marriage contract and the daughter had grown rich (L. c.)

CHAPTER CXV.

When a Woman May Be Divorced Without Receiving the Sum Provided For Her In the Contract of Marriage, and When a Woman Loses Her Rights Under the Contract of Marriage.

1. A woman who violates the Law of Moses or the laws of morality existing among Hebrew women may be divorced by her husband, she forfeiting the amount of money provided for her in her contract of marriage (Ketuboth 72b).

2. A woman who causes her husband to partake of any food prohibited by law, or a woman who causes her husband to cohabit with her during her monthly unclean periods, is considered as a violator of the Law of Moses (Tur).

3. If a woman makes a vow and does not fulfil it, she may be divorced without receiving her contract of marriage (Ketuboth 72b).

4. The foregoing rule of law applies also to a woman who violates an oath. If, however, in such event she produces evidence to the effect that he likewise is accustomed to violate oaths, she does not forfeit her contract of marriage (Rashba).

5. If a woman rejects her faith and thereafter accepts it again, she is treated in law like a woman who violates the Law of Moses, and, therefore, she

does not lose her right to the contract of marriage unless she received the necessary warning to that effect (Rosh).

6. What constitutes the law of morality (mentioned in Sec. 1, *supra*)? Whatever rules of morality were accepted by a Hebrew woman; such, for instance, as exposing a certain part of the body in public which in accordance to custom should be covered, or flirting with young men, or if she cursed her husband's parents in her husband's presence. If a woman violates any one of those mentioned above, she may be divorced without obtaining her rights under the contract of marriage, if there are witnesses who testify to the effect that her husband has given her warning and she has disregarded the same (Maimonides).

7. In the foregoing event, the husband is not compelled by law to divorce his wife, but it is a meritorious act for him to do so (Rosh).

8. A woman who threatens her husband that she is about to hire gangsters to kill him if he would do a certain thing to her, or a woman who is accustomed to be in privacy with another, is considered in law as a woman who violates one of the Laws of Moses (Ra'abad).

9. All those enumerated above lose whatever amount or right provided for her in her contract of marriage, whether such right is given her by law, or

is given her by the husband of his own volition. She is, however, entitled to get back whatever remains intact of the property she brought upon her marriage, whether such property was guaranteed by her husband or not (Ketuboth 101a).

10. If there is no evidence to prove that a wife has committed an act of adultery, but she herself admits it, such admission does not suffice to forbid her living with her husband, because it is probable that she makes such admission for the reason that she loves another man (Nedarim 90b).

11. The admission named in the foregoing rule of law, however, suffices to cause her to lose her rights under her contract of marriage, and to whatever is not present of the property she has brought upon her marriage (Tur).

12. If the husband has confidence in his wife and believes in what she says, he may divorce her, but he is not forced to do so. If, however, she was forced to commit such adulterous act, she does not lose her rights under the contract of marriage (Nedarim 91a).

13. If one witness testifies to the effect that a certain man's wife has committed an adulterous act, or if a man personally sees his wife committing such an act, if he considers the witness as trustworthy, he is bound to divorce her, for he is prohibited from having sexual intercourse with her, but he must pay her

whatever is due her under the contract of marriage (Kidushin 66a).

14. If, however, the woman herself admits that she has committed such adultery, she is not entitled to the rights under the contract of marriage.

15. In the event a husband personally sees his wife commit an adulterous act, he may impose upon her an oath to the effect that she has not gone astray on previous occasions while married to him as a condition that she be entitled to collect whatever she is entitled to under her contract of marriage. But if the committing of such act is established by the testimony of one witness, the husband cannot impose such an oath as a condition to her collecting whatever she is entitled to under her contract of marriage.

CHAPTER CXVI.

Laws Concerning the Marriage of Prohibited Women.

1. If a man marries a woman, by the marriage of whom he violates a prohibitory command of the Torah, if he has done it with consent, he is bound to pay her the entire amount provided for her in the contract of marriage, whether such provision is made by law or by his own free will, when he divorces her (Ketuboth 100b).

2. In the event the man dies, she is entitled to

support, but during his lifetime she is entitled to no support whatsoever. Even in the event she borrows money for her support, he is not bound to pay the same (Yebamoth 85a).

3. If, however, the man was not aware of the fact that the woman was forbidden to him, she is not entitled to the sum of money provided for her by law, but she is entitled to whatever sum her husband of his own free will has provided for her in the contract of marriage. Neither is she entitled to any support after his death (Ketuboth 101b).

4. He is not bound to pay for the use of the fruits of her property during the time they were married, and he is not bound to release her from captivity (Yebamoth 89a).

5. She is entitled to whatever property she brought upon her marriage, whether such property was guaranteed by the husband or not. If any of the guaranteed property was either lost, stolen or destroyed, the husband is not liable therefor. If any of the unguaranteed property was either lost, stolen or destroyed, the husband is liable for the same (Yebamoth 101a).

6. If one marries a woman, for the marriage of whom he is guilty of violating an affirmative commandment of the Torah, even if he was not aware of such violation, the rights of the woman are analogous to those of a case where a man marries a

woman whereby he violates a prohibitory commandment and he was aware of such violation (Maimonides).

7. If a man marries a woman, knowing that she is incapable of conception, she is considered in law like any ordinary woman, and, therefore, she is entitled to everything provided for her in the contract of marriage, and the husband is likewise entitled to all the rights a husband is entitled to under the law. If he was not aware that she was a woman incapable of conception, her rights are analogous to those of a woman for whose marriage a prohibitory commandment is violated and where the husband was not aware of such violation (Ketuboth 101b).

8. If one marries a woman who is forbidden to him by rabbinical enactment, whether he was aware of such prohibition or not, the rights of the woman in such an event are equivalent to those of a woman forbidden by a prohibitory commandment and where the husband is not aware of such violation (Yebamoth 85b).

9. In the last-named event, however, the woman's rights as relates to her own property, whether such property was guaranteed by the husband or not, are not altered (Ketuboth 101a).

CHAPTER CXVII.

Laws Concerning a Woman Who Is Incapable of Bearing or Has Any Other Deformities of Body.

1. If a woman was declared by expert opinion to be unable to have cohabitation with her husband, she is not entitled to any of the provisions embodied in her contract of marriage. If the husband contends that she is unable to cohabit with him, she is not entitled to support before she is examined to that effect (Tur).

2. If one marries a woman and thereafter it is found that she has one of the deformities or defects enumerated in Chapter 39 (*supra*), and the husband was not aware of it, she is not entitled to any of the rights provided for her in the contract of marriage (Ketuboth 72b).

3. If the woman's defects are such as undoubtedly existed prior to her marriage, as when she has one finger too many, or the like, her father must produce evidence to prove that her husband knew of such deformity and still consented to marry her. If he fails to produce such evidence, she loses all rights provided for her in her contract of marriage (Ketuboth 76a).

4. If the woman's deformities are such as are likely to have come into existence subsequent to her

betrothal, and the husband discovered them after their marriage, the husband must come forward with evidence to prove that such deformities existed prior to the betrothal and consequently his marriage is not binding, having been accomplished through error. If he discovered the deformities while she was still in her father's house, the father must produce evidence to prove that such deformities have come into existence after the betrothal had taken place and consequently it is his misfortune (Ketuboth 75b).

5. If the husband produces evidence to the effect that her deformities have existed prior to the betrothal, and the father produced evidence to the effect that the husband saw the deformities before the betrothal and was satisfied, the husband is bound to pay his wife whatever was provided for her in her marriage contract (L. c.)

6. If a man has lived with his wife for some length of time and thereafter claims that he has discovered in her a deformity which he had not noticed before, his contention is of no effect, even if that deformity happens to be in a place not readily detected by the eye, such as under the breasts or on the sole of the foot or the like; because it is presumed that no man would drink out of a cup without first thoroughly examining it (L. c.)

7. If a man becomes aware that his wife is an epileptic and he wants to divorce her, but possesses

no means wherewith to pay her the amount due her under the contract of marriage, she is forced to accept a divorce from him. He is bound to give whatever money he has at the time the divorce takes place, and the balance he will pay her whenever he is able to do so (Rosh).

8. If she refuses to accept the bill of divorce, he has a right to withhold from her support and clothing and to deny her marital rights (L. c.)

CHAPTER CXVIII.

Laws Concerning Dowry Rights of a Woman.

1. If a man, at the time of his marriage, gives his wife a promissory note for a certain sum of money to be collected from him when she demands it; if she collects such money from him, he must buy real property therewith, and he is entitled to make use of the fruits of such property (Rosh).

2. If, in the foregoing event, she contracted a debt after her marriage, not for support, the creditor cannot collect the note from her husband. If, however, she contracted the debt prior to her marriage, he may collect the note from the husband (L. c.)

3. If the note is made to be collected by her either when she is divorced or becomes a widow, her creditor cannot collect his debt from it, and the note is not to be sold in order to satisfy such debt (L. c.)

4. If the husband makes a gift to his wife after the marriage, the creditor can collect from the gift even in the event she contracted the debt after her marriage (L. c.)

5. An enactment was made in the City of Tultilo, that if the amount of the marriage contract of the widow is more than half of the estate of the deceased, she can only receive half of the estate; *e. g.,* the estate is worth $400 and the marriage contract and the dowry amounts to $300, she receives only half of the estate, or $200 (Rosh).

6. If the husband is in debt he must settle with all the claimants, and afterward divide the residue of the estate with the heirs of the wife.

7. Even if the wife died before her husband without leaving issue, then her heirs are entitled to her dowry and marriage contract (Rosh Ramo 8).

8. If the widow was silent of the dividing with the heirs of the husband, according to the enactment, she will not lose the support of the past time.

9. If a woman and her son died and it is uncertain who died first, and the husband contends that his wife died first, and thereafter the son died, and consequently he is entitled to inherit all property, because he is the legal heir of the son, and her relatives contend that her son died first, and thereafter she died, and they are entitled to half of

the estate according to the enactment, the heirs of the woman have to produce evidence to substantiate their contention, because the estate is in the possession of the husband, and nine points of the law is in his favor.

10. If one marries a woman who is no longer capable of bearing children, and he takes an oath to the effect that he shall not marry another woman without her consent, he cannot be free from such oath without her consent (L. c.)

11. If a man takes an oath to the effect that he shall give away one-half of his earnings to a certain man, and by doing so he is unable to support his wife, he must nevertheless fulfil his oath (L. c.)

12. If a widow has taken away her husband's entire estate in payment of her contract of marriage, she is not bound by law to provide her husband with a burial (L. c.)

13. Even if the estate suffices only to provide the man with burial expenditures, she is entitled to take it in payment of her contract of marriage, and he will be buried out of the charity treasury (L. c.)

LAW QUESTIONS.

1. The first-born is not entitled to a double share if the father left a debt (see Chapter 278).

If the father left an estate amounting to $315—$210 in cash and $105 in debts—and there are two brothers, the first born and an ordinary brother, and a note of $60 must be paid from the estate, the first-born claims that the $60 shall be deducted from $105 debt; the balance shall be $45 divided between the two brothers, making $22½ apiece; and from the $210 he is entitled to $140; total, $162½ and $92½ for the other brother. And the ordinary brother claims that the debt shall be deducted from the cash $210, leaving a balance of $150; $100 for the first-born, $50 for him and $105 to be divided between him and the first-born; making 152½ for the first-born and $102½ for himself.

The decision is 1/3 must be deducted from the debt and 2/3 from the cash; that is, $20 must be taken from debt and $40 from the cash of the note; the balance $85 shall be divided between the two brothers, giving $42½ to each one. The balance from the cash shall give to the first-born $113 2/6, and to the ordinary brother $99 1/6—total to the first-born is $155 5/6 (Peschi Tsuvo, Chapter 278, 8).

2. "A" owed "B" a verbal loan; afterwards "A" makes a gift legally consisting of his entire fortune, to "C," which it is understood was solely

done to free "A" from his obligation to "B." Now, then, is "B" entitled to collect from "C" or not?

Decision: By the above facts it is understood that "A's" idea in doing this is to defraud "B," because he would not leave himself nor his family suffer from hunger by giving his entire fortune to "C"; therefore, "B" can collect from the fund of this gift the debt. However, if there was any profit accruing from the time of the gift received, this profit belongs to "C" (see Jewish Code, Chapter 97).

3. "A" owed "B" a loan, made in a promissory note form, which consisted of all property that he bought, or what he may buy should be liable and surety for the loan; afterwards "A" transfers legally his entire business and fortune to "C," his relative, and we find "A" and his family living in grand me. "A's" wife attends the business same as behim. "A's" wife attends the business same as before; when asked, she says she's employed by "C."

Decision: By the above facts it is understood that "A's" idea in making this transfer is invalid and null, and "B" is entitled to collect all his debts from this fortune (L. c.)

4. "A" transfers all his fortune and business to "B" as a gift; afterwards he borrows money with a promissory note from "C" for a limited time; when note becomes due "A" fails to pay. Court gives "C" judgment to collect from "A" entire fortune; when the sheriff tries to collect, "B" shows all documents

that he is sole owner and not "A"; we then find "A" attending business as heretofore, and his answer when questioned is he works for "B."

Decision: "C" can collect from this entire fortune, even though the gift is prior to the debt, because such gift was made in contemplation of defrauding creditors (L. c.)

5. If a man bought a field and makes a condition that his wife shall not have the right to collect the amount mentioned in the marriage contract, such condition is invalid (L. c.).

This same rule applies to a man who buys a field in another's name, with the intent that his wife shall not collect the amount mentioned in the marriage contract from them. This is not legal.

6. Should a widow own an estate and decide to marry, she then transfers all her fortune to her daughter or to a stranger; after this she marries and her husband dies or divorces her, then she can recover her fortune from her daughter or stranger. It is understood that this transfer was made that the husband shall not have the right to the estate.

Kesuboth 79; Jewish Code, Chapter 71, Part 4.

7. "A" places work of any kind with "B" at "B's" shop; afterwards the place where the work was kept takes fire; and it's a custom of the locality to insure every shop and household.

Decision: "B," whether insured or not, is re-

sponsible to pay full amount for "A's" loss, except if he notified "B" that he is not insured.

See Jewish Code, Chapter 303, Sec. 11, B. M. 93.

8. "A" hires "B" as teacher for his son; in the meantime "B" takes sick for a certain length of time. Is "A" entitled to deduct from the compensation of "B" or not?

Decision: "A" is entitled to deduct; if, however, "B" receives his compensation in advance, some opinion hold that "B" is not bound to return (see Jewish Code, Chapter 333, Maimonides).

9. "A" hires "B" to teach his son; in the meantime his son takes sick or dies; can "A" deduct the compensation agreed upon for the time or not?

Decision: If the illness is not chronic, "A" is entitled to deduct the compensation of "B" (see Jewish Code, Chapter 334, Sec. 9).

10. If a man put some fruit or vessels on a sidewalk and another man is walking and accidentally broke it; is he liable to pay for them or not?

Decision is that he is not liable to pay and if the worker hurt himself, the owner of the vessels is liable to pay damages (B. K., 27a).

11. "A" bought a second mortgage installment from "B" and he endorsed the mortgage; the borrower comes to "A" to ask for an extension of time afterward and "A" permitted the extension without the consent of "B"; and afterward the borrower

failed to pay the interest of the first mortgage and the tax, and the owner of the first mortgage takes the property through foreclosure proceedings; is "B," the endorser, liable to pay for it or not?

There are two opinions: If the endorser is liable or not, and if it is doubtful in the law, nine points of the law favor the possessor. Therefore, "B" is not liable (Jewish Code, 132).

12. If a man married a woman and she said to him that she is a widow; afterward it is found that she was divorced from the first husband and this husband is a cohen, descended from the high priest Aaron, who according to the law he is not permitted to marry such a woman; is she entitled to the money mentioned in the contract of marriage or not?

Decision: She is not entitled to the money, or to support, either when he is living or after he is dead, and he is not bound to release her from captivity; and if she dies, he does not inherit her estate, and is not entitled to burial (Aven Hoezer, 116).

13. If a team is on the road and damaged by a team behind, which runs into it is the driver of the second team liable or not?

Decision: He is liable (B. K., 31b).

14. If a man takes a prolonged journey from his home and absents himself for over 12 months, and after such period his wife gives birth to a child, the child is illegitimate.

15. However, if the husband's stay was for less than 12 months and the wife has a good reputation, then there are two authorities; it being held that the child is legitimate or illegitimate; therefore, the child is of doubtful legitimacy (Yavomas 80).

(NOTE:—This child is forbidden to marry an Israelite or a bastard and can only marry one of his own kind.

16. If a woman starts pregnancy, *e. g.,* at the end of May, and gives birth to a child on the 2nd of November, then the woman cannot be suspected of misrepresentation, and the child is legitimate because it was born in the seventh month (Jewish Code, Chapter 4).

17. If a woman starts pregnancy in May and gives birth in September to a still-born child, and before the child leaves the mother's womb the child's cries are heard, the woman cannot be suspected of misrepresentation, because it is possible for the child to be able to cry at this time (L. c.)

18. If a child born of prohibited cohabitation, the penalty for the culprit is either death or coros (life cut short at age of 50). The child born of such cohabitation is a bastard, and is forbidden to intermarry with an Israelite for all generations (Yavomas 49).

19. If a man goes on a sea voyage for a long

time, and the wife thinks him dead, and therefore marries and then gives birth to a child as a result of the marriage; and if afterward the husband returns, the child from the second husband is a bastard, and she must be divorced from the second husband.

20. If she cohabits with the first husband again before she receives her divorce from the second, and gives birth to a child from the first husband, this child is illegitimate; according to Rabbinical enactment this child is forbidden to marry an Israelite or a bastard and can only marry one of his own kind (L. c., 117).

21. If two brothers dwell together and one dies and leaves no issue, then the widow is not permitted to re-marry until she becomes (Chlizo) barefooted (see Jewish Code, Chapter 169).

22. If the woman re-married without paying attention to this barefoot ceremony, and gives birth to a child, the child is considered a doubtful bastard and she must be divorced from the second husband.

23. If a man leases his wife's property for a term certain, and thereafter before the expiration of the term he divorces her, the lease is valid (Ketuboth 80).

24. A servant of a house or a sexton of a church from which property is stolen or lost is responsible for the loss (Pischi Tsuvo 303-1).

25. If one becomes surety for a man on his contract of marriage either for the principal sum or for an additional sum promised by the man as good will, he is not liable, even though there was a form of agreement. Because hedid this only for a command (Kinion) (Baba Bathra 174).

26. If, however, one becomes surety for his daughter-in-law for his contract of marriage, he is liable, if there was a form of agreement (Jewish Code 130).

27. It is disputed whether the same law applies to the case where one becomes surety for dowry.

28. If a man is condemned to die or committed to prison for life, he is forced to divorce the wife and to return to her the amount of the marriage contract.

29. If, however, it is for a certain length of time, and if sufficient support is left, he cannot be forced to divorce her; if there is insufficient support and she had not taken any part in the crime, then he can be forced to divorce her and return the money of the marriage contract (Ketuboth 77; see Jewish Code, Chap. 177).

INTRODUCTION TO THE LAW OF DIVORCE.

All the commandments of the Holy Torah were given for the welfare of society, that people in their social life may live happily with one another and in perfect security. The Talmud, therefore, interprets the verse in Leviticus 18: "That a man may perform them and live with them," that a man may with such laws promote his welfare through life, but not that the observer of them should forfeit his life on account of them.

Therefore, when the life of any person is at stake, it is permissible to violate wilfully any law, no matter how severe, in order to save the life of such individual. Nay, the Talmud lays it down as a rule of law that even the Holy Sabbath may be profaned in order to save the life of even one person (Sabbath 107; Yumo 85).

And for the same reason, our Torah has commanded us that if lawfully married husband and wife cannot, for one reason or another, live happily together as husband and wife, that under such circumstances a man may divorce his wife. As was rightly expressed by the great philosopher, "It is better that four persons shall laugh than two persons should cry." It was, therefore, laid down in the Torah:

Deuteronomy xxiv, 1: "When a man hath taken a wife, and married her, and it come to pass that if she find no favor in his eyes, because he hath found

some scandalous thing in her, he may write her a bill of divorcement, and give it in her hand, and send her away out of his house."

According to the law as laid down in the Talmud (Yebamoth 112b), a man is permitted to divorce his wife without securing her consent thereto. It is for this reason that the Talmud (Gittin 90) has said: "He who divorces his first wife, for him even the very altar sheds tears of grief."

However, now the view of Rabenu Gershom prevails that a man is not permitted to divorce his wife without first securing her consent thereto, unless where the woman has violated the Laws of Moses, or when she has not given birth to children after the expiration of ten years from the day of their marriage. In the latter event, the husband may either divorce his wife by force, or he is permitted to marry another woman. Therefore, it is now no violation either of law or morality to divorce a wife if her consent is secured thereto (Ran).

It is deplorable that many uneducated people nowadays, upon securing a legal divorce either from the husband or the wife, marry another without first obtaining a religious divorce from a rabbi or some one competent to judge. The children of the second marriage are, according to the Hebrew law, illegitimate.

A marriage contract, when entered into by the parties, is made in accordance with the Laws of

Moses and Israel. The groom expressly says to his wife-to-be: "Thou are betrothed to me in accordance with the Laws of Moses and Israel." Consequently the dissolution of such marriage cannot become effective unless the contract is dissolved in accordance with the Laws of Moses and Israel. A contract may be rescinded only by the same parties and under the same conditions it has been made.

If a man marries a woman who represents herself as having been divorced, and later he learns that she procured only a civil divorce, so that according to our laws their children are illegitimate and he is prohibited from continuing to live with her, what are his rights even in the civil courts? She has procured the marriage by false representations as a very material fact and the husband could sue to have the marriage annulled upon that ground. Under the Jewish laws no divorce between them is necessary, for there never was a valid marriage.

No government or any legislative or judicial body can or may dictate that a marriage originally effected through the Laws of Moses and Israel should be dissolved by a different law. Jews are bound to recognize the law of the country they live in (Baba Kamma 117).

It is, by the law of reciprocity and mutuality, the duty of any government to recognize as a legal and binding divorce when given by a competent rabbi in accordance with the laws of Jewish jurisprudence.

CHAPTER CXX.

1. The bill of divorce must be written either by the husband in person or by his duly appointed agent (Kidushin 41).

2. In the event an agent writes the bill of divorce, the parchment or paper on which the bill of divorce is written and all the writing materials incidental thereto must be provided by the husband (Roch).

3. It is, therefore, customary that when the husband is present the scribe gives all the writing materials to the husband in the nature of a gift, before writing the bill of divorce (Bal Hoetur).

4. The husband must pay the scribe's fees. If the woman pays for the writing of the divorce, she must first give such money as a gift to her husband and he then pays it to the scribe, in order that the fees paid may be legally his (Baba Bathra 167).

CHAPTER CXXI.

1. It is necessary that the husband must be of sound mind from the time the writing of the bill of divorce is commenced to the time it is delivered by him to the wife (Gittin 67).

2. If the husband has been overcome by a spell of insanity at the time he ordered the bill of divorce to be written, no bill shall be written for him even after he has recovered from such a spell (L. c.)

3. A man in a state of intoxication equivalent to that of Lot (Gen. 19) cannot order that a bill of divorce be written for him (L. c.)

4. A person on his death bed may divorce his wife if he is conscious and is able to speak. If he is unconscious and unable to speak, he cannot divorce his wife (Kidushin 71).

CHAPTER CXXII.

1. If a man authorizes a scribe and witnesses to write and to attest a bill of divorce and deliver it to his wife, and after having done so, it was discovered that the bill was illegally drawn, they may, with the same authority given to them by the husband, write and deliver another bill of divorce, and it is not necessary for them to receive a new authorization (Gittin 63b).

CHAPTER CXXIII.

1. All Israelites are competent to write a bill of divorce, but not a heathen, deaf and dumb, the insane and a minor. Even the woman herself is permitted to write the divorce with the permission of the husband. In such event, however, she must first convey the bill to her husband and thereafter the husband delivers the same to her (Gittin 23).

2. An Israelite who has become a convert, or has violated the Sabbath openly and in public is incompetent to write a bill of divorce (Chulin 5).

CHAPTER CXXIV.

1. It is necessary that the bill of divorce must be written on something which is detached. If it is written on something which is attached to some other object and then was cut loose and delivered to the woman, it is invalid (Gittin 22).

CHAPTER CXXV.

1. A bill of divorce must be written with some fluid which is durable. If the bill of divorce is written with some undurable liquid, such as fruit juice, or the like, it is not valid.

2. There must be no erasures in the bill of divorce, nor should it be written on erased places (Gittin 17).

CHAPTER CXXVI.

1. A bill of divorce may be written in any kind of writing and in any language, provided that the entire bill is written in one and the same language, and contains not less than twelve lines (Gittin 87, 19).

CHAPTER CXXVII.

1. The bill of divorce must be dated. If it bears no date, it is invalid, and the woman receiving it is not permitted to re-marry. If, however, the woman does re-marry after receiving a bill which is not dated, she is not bound to be divorced from such

marriage, even if she has had no issue by the same (Gittin 87).

2. The bill of divorce must be written and attested to by the witnesses on one and the same day. If it is written during the day time and attested to by witnesses the following night, it is invalid, because the night belongs to the following day (Gittin 17).

CHAPTER CXXVIII.

1. It is necessary that the name of the town where the bill is written be mentioned in the bill of divorce. It is likewise necessary to mention the name of the place where the husband and wife are found at the time the bill of divorce is written (Gittin 79).

CHAPTER CXXIX.

1. The name of the man and the woman must be mentioned in the bill of divorce. If a man has two names, the name by which he is generally known should be written in the bill, and it must be stated thus: Such and such a man known by such and such a name, and any other name by which he may be known, is divorcing a woman known by such and such a name or by any other name by which she may be known (Gittin 34).

CHAPTER CXXX.

1. Two competent witnesses must sign their names to the bill of divorce below the last line thereof. There should be left no space vacant between the body of the bill and the signatures of witnesses, wide enough for two lines to be written in (Gittin 87).

2. Before the witnesses attach their signatures to the bill the ink must be perfectly dry.

CHAPTER CXXXI.

1. The bill of divorce must be exclusively written for the man and the woman who seek the divorce. If a scribe writes a bill of divorce for practicing purposes, and thereafter the name of one seeking a divorce corresponds to the name mentioned in such bill, it is invalid for the purpose sought, because it was not exclusively written for the parties (Gittin 24).

CHAPTER CXXXII.

1. The bill of divorce must be written for the woman when she is subject to being divorced; *i. e.,* after marriage; if a man writes a bill of divorce for his intended wife before marriage, he cannot divorce her therewith after marriage (Yawometh 52).

CHAPTER CXXXIII.

1. The bill of divorce must be delivered by the husband to the woman in the presence of two competent witnesses (Gittin 86).

CHAPTER CXXXIV.

1. In order that a bill of divorce may be valid, it is necessary that the husband annul all previous notification. For, if a man gives notice to two witnesses, saying: "Know you that the bill of divorce I am about to deliver to my wife is given under duress, and, therefore, I say that to you in order that it shall be considered null and void," the bill of divorce is as a result invalid (Eruchin 21).

CHAPTER CXXXV.

1. The witnesses, in whose presence the bill of divorce is delivered, must read it before delivery. It is likewise preferable that they read it after delivery. If, however, they read it only after delivery to her, the divorce is valid (Gittin 19).

CHAPTER CXXXVI.

1. The husband, upon delivering the bill of divorce to his wife, must say to her in the following words: "Behold, here is your bill of divorce; accept your bill of divorce; and behold, you are divorced

from me; and behold, you are permitted to marry any man from now on" (Gittin 78).

CHAPTER CXXXVII.

1. It is necessary that the release thus given by the husband must be absolute and not conditional. If the husband says: "You are hereby permitted to marry any man except such and such a person," the divorce is invalid. If he does impose such condition upon delivering the divorce, he must take the bill back from her, and then give it again to her, saying: "Behold, you are permitted to marry anybody you please" (Gittin 82).

CHAPTER CXXXVIII.

1. The bill of divorce must be delivered from the hand of the husband into the hand of the woman. If he says to her: "Take your bill of divorce from upon the ground," it is invalid (Gittin 78).

CHAPTER CXXXIX.

1. If the husband throws the bill of divorce into the court belonging to his wife, the divorce is valid, and is immaterial whether she has title to such court, or whether it was loaned or hired by her (Gittin 77).

2. The foregoing rule of law, however, applies only to a case where the woman is standing in the court at that time, and the court is absolutely under

her care and control. If the woman is not standing there, although the court is in her absolute care and control, the delivery is invalid, and she is not divorced (L. c.)

CHAPTER CXL.

1. The husband may appoint an agent for the purpose of delivering a bill of divorce to his wife. The divorce takes effect in such a case only when the bill is actually delivered by the agent unto the woman. Therefore, the husband may retract before the bill was actually delivered to her (Gittin 62).

2. A woman may appoint an agent to accept a bill of divorce from her husband. In such event, the divorce becomes effective as soon as the bill is delivered to the agent. The agent is subrogated to the rights of the woman in every respect. If, therefore, the bill of divorce is thrown into his court or into his four cubits, it is valid. Upon delivering the bill to the woman's agent, the husband must say to him: "Accept this bill of divorce for my wife" (L. c. 63).

CHAPTER CXLI.

1. A woman may appoint an agent for the purpose of accepting for her the divorce from the hand of the agent appointed by her husband, but she cannot appoint her husband's agent to become her's for the purpose of accepting the bill (Gittin 63).

2. In the event the husband appoints an agent, he must give him a power of attorney in writing, and it must be written thus: "Before us, the undersigned witnesses, so and so has delivered a bill of divorce into the hand of so and so to deliver it to his wife so and so; he shall deliver it to her wherever he may find her; he may deliver it to her in person, or to her agent, or to her agent's agent; that your hand shall be like my hand, your mouth shall be like my mouth, your speech like my speech, your act like my act; and I give you permission to appoint another agent, not in person, but through mail" (Beth Joseph).

CHAPTER CXLIII.

1. It is permissible to divorce upon a certain condition. If the condition is complied with, the divorce is valid; if it is not complied with, it is invalid (Gittin 74).

2. A condition shall not be embodied in a bill of divorce. The bill must be written in the ordinary prescribed form, and if he wishes to impose any condition, he may do so in the presence of the witnesses when he delivers the bill to his wife (See Chap. 38).

CHAPTER CLIV.

A Man or a Woman May Be Compelled to Divorce.

1. These men shall be compelled to divorce their

wives and to pay them the amount of the marriage contract (Ketuboth 71):

2. If bad odors come from his mouth, or nose, the woman can compel the husband to divorce her and to give her the amount mentioned in the marriage contract (L. c.)

3. But, if she knew of his sickness previous to her marriage with him, she cannot claim a divorce (L. c.)

4. If she wants to, she can live with him (L. c.)

5. If the husband suffers from leprosy of the body, he is compelled to divorce her and to return to her the amount mentioned in the marriage contract. Even if she is willing to live with him, it is not permitted, on account of her health (L. c.)

6. It is disputed whether or not a convert shall be forced to divorce his wife, provided he does not force her to violate the law of Moses or the laws of morality.

7. If a man is discovered, or if he admits, visiting adulterous women, he is compelled to divorce his wife and to return to her the amount mentioned in the marriage contract (Ramo).

8. If a man refuses or cannot support his wife, because he is poor, he may be compelled to divorce her, and the money mentioned in the marriage con-

tract may remain a debt which he must pay when able.

9. If he refuses to cohabit with his wife, he may be compelled to grant her a divorce and to return to her the amount of the marriage contract.

10. If a man is often in bad temper and drives his wife from his house, he is compelled to divorce her, because in this manner he deprives her of support and cohabitation, and he must return to her the amount of the marriage contract.

11. If a man often smites his wife, it is the duty of the Court to warn him—they may excommunicate him, and even smite him so that he should not hurt his wife again. If he does not obey, some authorities hold that he may be compelled to divorce her, after being warned twice. But this law can be enforced only if he provoked the quarrels.

12. If she is a shrew, and curses him, or slanders his parents, and after warning by her husband she does not take heed—it is disputed whether she may be punished. Some hold that even if the accusation is true she may not be struck.

13. If it is uncertain as to who started the quarrel, she is more believed, because a woman is of a weaker nature and would not be apt to become offensive.

14. Evidence may be secured from neighbors. If

it is proved that she is a shrew—that she cursed him, or slandered his parents, and that she had been warned twice—he may secure a divorce and need not return to her the amount of the marriage contract.

15. If a woman departs from the home of her husband because he is violent and he has smitten her, and she contracts debts for her support, he must pay them. But, if a woman departs from the home of her husband of her own accord, he is not responsible for debts contracted by her for her support.

16. If a man became crippled; if he lost a hand, a foot, after his marriage, and his wife refuses to live with him, he cannot be compelled to divorce her (Ketuboth 77).

17. Some hold that if he lost both hands, or his feet, after his marriage, and his wife refuses to live with him, he may be compelled to grant her a divorce and to return to her the sum of the marriage contract (Tur; Roch).

18. If a man is subject to spells of insanity, becoming worse every day, and his wife claims that she fears to live with him because of his violence, that she only married him because she was poor, and because her father advised her to marry him, since he could not provide her with a dowry, he cannot be compelled to divorce her because she may not be telling the truth (Tur).

19. If a man has epileptic spells, and there is no danger in cohabiting with him, authorities differ whether he can be compelled to divorce his wife. Some hold that he cannot be compelled to divorce her, but she cannot be forced to stay in his home.

20. If there is danger in cohabiting with him, he may be compelled to divorce his wife and to return to her the amount of the marriage contract.

21. If a man wishes to go away for a long journey without the consent of his wife, he may be compelled to divorce her and he must return the amount of the marriage contract. But, if he has not the money, he remains in her debt.

22. If danger threatens him and he is compelled to run away from the city or he is committed to prison, he may be forced to divorce the wife and to return to her the amount of the marriage contract (Ketuboth 77; Tur).

23. If, after ten years of married life, a couple are childless, he must divorce his wife and return to her the amount of the marriage contract; but she may marry again (Yavamoth 64).

24. If, after being married to a second man ten years she is still childless, he may be compelled to divorce her; but she cannot marry a third time.

25. If, at a time during this period he was absent from home, or if he or she had been sick, the period

of his absence or the period of his or her sickness cannot be included as part of the ten years.

26. If she gave birth to a dead child, the ten years' period begins after the event.

27. If she gave birth three times to dead children, he may be compelled to divorce her; but she may marry another man.

28. However, if she marry a third man she must be divorced and cannot receive the money of the contract of marriage (L. c.)

29. If the third husband was aware that she is childless when he marries her, she is entitled to the money of the contract of marriage (L. c.)

30. If a husband claims that his wife gave birth to a dead child during a period of ten years, and she denies it, the wife must be believed.

31. If the husband claims that his wife gave birth to two dead children, and she claims to have given birth to three dead children, the wife's testimony is accepted as true.

32. If the woman marry a fourth man, and she bears children, she cannot demand the money of the marriage contract from the third one, because he can say that she has improved in her health now, and, therefore, is able to bear children.

33. If a man marries a woman forbidden to him,

even by the Rabbinical enactment, he can be forced to divorce her if he disobeys; the Court can punish him by boycotting him in business, refusing to his children the right to circumcision, and he cannot receive burial rites; and they can impose any other punishment that they may find necessary to force him to divorce the forbidden woman (Chapter 154).

34. If a husband refuses to cohabit with his wife, he can be excommunicated until he is repentant (L. c.)

35. If an unmarried man cohabits with an unmarried woman, it is preferable that he marry her, although he cannot be forced to do so, except, however, if he promise to marry her, in which event he must fulfill his promise (Chapter 177).

36. If two men cohabit with the unmarried woman, the first being married and the other unmarried, it is preferable that the unmarried man marry the woman (B. K. 33).

37. A harlot was promised from her visitor compensation. She can demand it if he admitted and if he confesses it; he must take an oath to prove his innocence (B. M. 91a).

38. If a man induces a harlot to cohabit with him upon his promise of marriage, he is compelled to marry her, if he admits his promise. If he denies such promise he must take an oath.

39. If she becomes pregnant as a result of such cohabitation, and she demands support for the child, her claim is not tenable during pregnancy. However, when the child is born and the visitor admits that it is his child, he is liable to support (see Jewish Code 70-71).

40. If he denies it, he must take an oath, if the Court find some facts that can be believed (Chapter 177).

This book may be kept

FOURTEEN DAYS

A fine will be charged for each day the book is kept overtime.

SEP 26 1984			